



## Adroddiad

Ymchwiliad a gynhaliwyd ar 28/05-  
13/6/08, 29/8/08

Ymweliad â safle a wnaed ar 17/6/08

## Report

Inquiry held on 28/05-13/6/08, 29/8/08

Site visit made on 17/6/08

**gan/by R.M.Poppleton DipTP, DMS, MRTPI, JP**

**Arolygydd a benodwyd gan y Gweinidog  
dros yr Amgylchedd, Gynaliadwyedd a  
Thai, un o Weinidogion Cymru**

**an Inspector appointed by the Minister for  
Environment, Sustainability and Housing,  
one of the Welsh Ministers**

Dyddiad/Date 13/11/08

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Town and Country Planning Act 1990  
Section 79 & Schedule 6, paragraph 3(1)

Appeal by Western Power Distribution Investments Ltd

against the failure of Cardiff County Council to determine within the prescribed period an application for outline planning permission for development comprising residential units, sailing lake and clubhouse, wetlands habitat and educational/community centre, re-profiling of the existing reservoir all with structural landscaping, roads, footpaths, cycleways and associated highway works (and includes the demolition of Nos.147-151 Rhyd-y-penau Road and highway works to Cyncoed, Rhyd-y-penau and Lisvane Roads) at the Llanishen Reservoir, Lisvane Road and Nos.147-151 Rhyd-y-penau Road, Cardiff CF23

## Table of Contents

Section/subject heading	Paragraphs numbers
Procedural Matters	1-19
Site & Surroundings	20-30
The Proposals	31-45
Statements of Common Ground	46-47
Planning Policy	48-56
Planning History	57-58
The Reservoirs Act Report	59-69
Consequential legal submissions	70-84
Submissions relating to Human Rights	58-90
<b>The Case for the Appellant</b>	
Introduction	91-96
Context of the site & previously developed land	97-106
The benefits of development	107-114
Differences with the previous scheme	115-120
Reasons for refusal:- open space	121-156
- sailing	157-211
- ecology	212-249
- traffic	250-269
Other matters: - housing policy	270-272
- hydrology	273-274
- fly fishing	275
Appellant's conclusions	276
<b>The Case for Cardiff County Council</b>	
Principal Issues	277-278
The reservoir drain down	279-289
Open space	290-308
Ecology	309-312
Sailing	313-320
Housing need & previously developed land	321-323
Council's conclusions	324-328

<b>The Case for RAG</b>	
Introduction	329-330
Previous appeal decision	331-334
Fall-back position	335-337
Previously developed land & nature conservation	338-342
Approach to a country park	343-346
Sailing	347-354
Non-compliance with development plan	355-363
Alleged benefits	364-369
Traffic effects on Lisvane	370-373
RAG's conclusions	374-376
Other interested parties	377-398
Written representations	398-419
Possible conditions & planning obligation	420-423
<b>Inspector's Conclusions</b>	424-
Preliminary matters: - the amended application	426-427
- Human Rights	428
- Reservoirs Act Report	429-436
- Previous appeal decision	437
Main considerations:	438-
- Open space	439-469
- Sailing	470-484
- Implications for SINCs	485-494
- Traffic and Access	495-511
Other policy considerations	512-518
Planning obligations and conditions	519-544
Inspector's overall conclusions & recommendation	542-546
Annex: recommended planning conditions	
Inquiry appearances	
Documents lists	

A number of acronyms are used throughout this report: for clarity these are set out below in alphabetical order:

BAP	Biodiversity Action Plan
CCW	Countryside Council for Wales
DDA	Disability Discrimination Act
EAW	Environment Agency Wales
EIA	Environmental Impact Assessment
ES	Environment Statement
LBAP	Local Biodiversity Action Plan
LP	City of Cardiff Local Plan (adopted January 1996)
MIPPS	Ministerial Interim Planning Policy Statement
NAW	National Assembly for Wales
NFEET	The Nant Fawr Education and Ecology Trust
NPFA	National Playing Fields Association
PdI	Previously developed land
PIM	The pre-Inquiry meeting
PPW	Planning Policy Wales
SINC	Site of Importance for Nature Conservation
SP	South Glamorgan (Cardiff Area) Structure Plan 1991-2011 (adopted April 2007)
SSSI	Site of Special Scientific Interest
SUDS	Sustainable Drainage System
RAG	Reservoirs Action Group
RAI	Reservoirs Act Inspector
TAN	Technical Advice Note (PPW)
UDP	deposit draft Unitary Development Plan 1996-2016
WPD	Western Power Distribution Investments Ltd
WSP	Wales Spatial Plan
WTSSW	Wildlife Trust of South and West Wales

**File Ref: APP/Z6815/A/07/2042394**

**Site address: Llanishen reservoir, Lisvane Road and 147-151 Rhyd-y-penau Road, Cardiff**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Western Power Distribution Investments Ltd against Cardiff County Council.
- The application Ref 06/1101/E is dated 12 May 2006
- The development proposed is residential units, sailing lake and clubhouse, wetlands habitat and educational/community centre, re-profiling of the existing reservoir all with structural landscaping, roads, footpaths, cycleways and associated highway works (and includes the demolition of Nos.147-151 Rhyd-y-penau Road and highway works to Cyncoed, Rhyd-y-penau and Lisvane Roads).

**Summary of Recommendation: That the appeal be allowed and outline planning permission granted subject to conditions.**

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**Procedural Matters**

1. A PIM was held on 18 March 2008 [Doc ID.3]. The Inquiry heard evidence for a total of 13 days, between 28 May 2008 and 29 August 2008. I carried out an accompanied inspection of the site and immediate surroundings on 17 June 2008 and also carried out unaccompanied inspections from various vantage points during and before the inquiry.
2. The planning application was dated 12 May 2006 and given the reference 06/1101/E. As it was submitted prior to 30 June 2007, no formal access statement was needed. Nevertheless, the ES deals with such matters. The appeal for failure to determine it was lodged on 13 April 2007.
3. By letter dated 28 August 2007, the determination of the appeal and application was recovered for the Welsh Minister's decision, because the residential development was for more than 150 houses on more than 6 hectares of land.
4. The application was submitted in outline, with matters relating to siting, design, external appearance and landscaping reserved for later detailed approval. Means of access, however, was to be considered at this stage.
5. The description of the proposed development is set out above and relates to 35.6 hectares. The Lisvane reservoir is excluded from the application site.
6. While the breakdown of the proposed 324 dwellings is not fixed at this outline stage, the illustrative master plan<sup>1</sup> envisages 142 houses and 182 apartments. Of these 30% would be provided as affordable housing split between three different tenure types resulting in 10 special needs units, 22 low cost home

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<sup>1</sup> figure 5.1 of the Environmental Statement - May 2008 -Doc. CD97

ownership units and 65 social rented units<sup>2</sup>. The general arrangement of the proposed development is shown on the illustrative, indicative plan YOR 1257\_30-1 [Doc. CD 281] to which any outline planning permission granted would refer.

7. In the light of the application being in outline, it was agreed that the following drawings and documents are for determination in this appeal. In view of the complexity arising from the multiple options relating to the proposed access arrangements, these are set out in an attached document<sup>3</sup>.

- **Environment Statement (April 2008) – Volume 2: Figures and Technical Appendices:** [Doc. CD 97] Figure 1.1: Appropriate Assessment Plan & Figure 1.2: Site application boundary.
- **Proof of Evidence of Mr Brian Denney – appendices:** [Doc. ID 15] – Appendix 10 – Design Statement
- **Traffic and Transport Statement of Common Ground – Option A** [Doc. CD .269A] – Figures SCG15A: Proposed southern access – Cyncoed Road/Rhyd-y-penau Road junction & SCG18A: Proposed northern access – Lisvane Road junction, or alternatively:
- **Traffic and Transport Statement of Common Ground – Option B** [Doc. CD. 269B] – Figures SCB15B – Proposed southern access – Cyncoed Road/Rhyd-y-penau Road junction & SCG18B – proposed northern access – Lisvane Road junction, or alternatively:
- **Traffic and Transport Statement of Common Ground – Option C** [Doc. CD. 269C] – Figures SCB15C – Proposed southern access - Cyncoed Road/Rhyd-y-penau Road junction & SCG18C – proposed northern access – Lisvane Road junction.

8. The submitted application and the up dated Environmental Statement of August 2006 (ES) [Docs. CD 96/97] envisaged the main access route for all vehicular traffic would be from the south-eastern part of the site across the Nant Fawr meadows linking to the Ryhd-y-penau Road roundabout. A route to Lisvane Road in the north-west part of the site would be restricted to bicycles, pedestrians and buses, being controlled by a 'bus gate'. This was the same arrangement as previously considered at appeal.<sup>4</sup>

9. The appellants advised the PIM in March 2008 of the proposed revised ES<sup>5</sup>. This was duly lodged and is dated 16 April 2008<sup>6</sup>. It combines with the two addenda to the 2006 version in response to requests for further information from the Council on 4 October 2006 and 16 February 2007, as well as the further

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<sup>2</sup> Doc. SOCG: CD269D.

<sup>3</sup> Doc. CD 315

<sup>4</sup> For the avoidance of any doubt, a 'bus gate' comprises a means of limiting passage to public service and other vehicles by means of electronic control of an obstacle in the highway. It could involve CCTV cameras reading allocated vehicle index numbers, or through the use of transponders

<sup>5</sup> See also correspondence on file from Geldards to Harmers dated 18 March 2008

<sup>6</sup> Docs. CD 96-98

information provided in August 2007 in response to a request by the Welsh Assembly Government prior to the validation of the appeal.

10. It included for consideration three alternative access arrangements. The original arrangement noted above represents Option A. The reversal of the main traffic flows so that all traffic would use the north-western access leading to Lisvane Road represents Option C, but with buses, pedestrians and cycles passing through the site to the south eastern access. The combination of the two Options represents Option B. The consultation process on the amended ES ran from 23 April 2008, with a press advertisement placed on 7 May 2008. A further revision to the Traffic Assessment element of the ES was submitted on 14 May 2008 so as to reflect the changes included in the ES of 16 April 2008.

11. I have taken into account the environmental information contained in the revised ES in arriving at my conclusions and recommendations.

Putative reasons for refusal:

12. Although the appeal was lodged against the failure to determine the application within the prescribed period, the Council subsequently formally considered at the Planning Committee meeting on 17 October 2007 what its decision would have been. It resolved the following:

- Resolution 1: *That the County Council is satisfied that the submitted Environmental Statement dated 12 May 2006, addenda dated August 2006 and 13 October, and the second addendum dated 16 February 2007 contains sufficient information and the Council has taken account of the Environmental Statement and accompanying information in assessing the environmental impact of the proposed development.*
- Resolution 2: *Had the Council been able to determine the application, that permission would have been refused for the following reasons:*
  1. *The proposal would cause serious harm to the quality, integrity and coherence of this part of the Nant Fawr open space corridor contrary to policy 7 of the adopted City of Cardiff Local Plan, policies B4 and C8 of the South Glamorgan (Cardiff Area) replacement Structure Plan and policies 1J and 2.49 of the deposit Cardiff Unitary Development Plan in so far that:*
    - (i) *the site is strategically important forming part of the Nant Fawr open space corridor, which is identified as an essential element of the City's green spaces;*
    - (ii) *the site has significant amenity importance for its users and those residing close-by and overlooking it; and*
    - (iii) *The site is important for its nature conservation value.*
  2. *The existing water area provides a wide range of sailing and sail training facilities. The proposed water area, by reason of its modest dimensions, constrained nature, and the lack of a full alternative replacement facility, would result in a significant diminution in the long term opportunities for sailing activity available to the population of Cardiff, compared to the existing opportunities, contrary to policy 7 of the City of Cardiff Local Plan and policies B4 and C8 of the South Glamorgan (Cardiff Area) Replacement Structure Plan.*

3. *The proposal would cause unacceptable harm to the Llanishen Reservoir Site of Importance for Nature Conservation which is not outweighed by the potential ecological benefits of the scheme, contrary to policy C4 of the South Glamorgan (Cardiff Area) Replacement Structure Plan and policy 2.47 of the deposit Cardiff Unitary Development Plan.*
  4. *The application fails to provide sufficient information to adequately ensure the long-term management and maintenance of the non-residential parts of the site as outlined in appendix 4, to the detriment of nature conservation and ecology. The proposals are therefore contrary to policy 8 of the City of Cardiff Local Plan, policies C3, C4 and H6 of the South Glamorgan (Cardiff Area) Replacement Structure Plan 1991-2011, policies 1H, 2.46, 2.47 and 2.48 of the deposit Unitary Development Plan and the Cardiff Supplementary Planning Guidance on biodiversity.*
  5. *The application fails to adequately provide satisfactory linkages by foot, cycle and public transport to and from surrounding residential areas, schools, educational establishments and recreational routes as outlined in appendix a and conflicts with policies 14, 16, 17, 18 and 19 of the City of Cardiff Local Plan, policies MV2, MV6, MV12 of the South Glamorgan (Cardiff Area) Structure Plan 1991-2011, and policies 1C, 1F, 1J, 1K, 1L and 2.7 of the deposit Unitary Development Plan.*
  6. *The application fails to provide adequate recreational open space and equipped children's play areas as outlined in appendix 4 and is contrary to policy 31 of the City of Cardiff Local Plan, policies 1J and 2.26 of the deposit Unitary Development Plan and the open space Supplementary Planning Guidance.*
  7. *The application fails to adequately deliver affordable housing as outlined in appendix 4 and is contrary to policy 24 of the City of Cardiff Local Plan, policy H5 of the South Glamorgan (Cardiff Area) Replacement Structure Plan 1991-2011 and policy 2.23 of the deposit Unitary Development Plan.*
  8. *The application fails to adequately provide for the necessary improvements to school facilities as outlined in appendix 4 and conflicts with policy 2.27 of the deposit Unitary Development Plan.*
- *Resolution 3: That the appellant be advised that if an appropriately worded legal agreement to deal fully with all the outstanding issues in reasons 4-8 were to be formally submitted prior to the appeal being heard, then those reasons would fall and would not be contested by the Council.*

#### Unilateral undertaking:

13. At the start of the Inquiry, the Council indicated that it considered that the terms of the Unilateral Undertaking (UU) being prepared, would seek to adequately address these matters. The final version of the UU was submitted on the closing day of the Inquiry<sup>7</sup>, which the Council confirmed met the concerns expressed in the resolution 3 above, save for concerns regarding the necessary insurance liabilities in respect of the reservoir. I return to this discrete matter later.

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<sup>7</sup> Doc. ID 9

The amended application:

14. Shortly before the Inquiry opened, there was correspondence between the appellants, the Council and Messrs Harmers (on behalf of RAG) and Julie Morgan MP concerning the submission of amendments to introduce access Option C<sup>8</sup>. Third party correspondence also raised concerns<sup>9</sup>. At the start of the Inquiry, submissions were made by the Council and by RAG that the amendments (Option C) included in the revised ES of April 2008 should not be entertained and that the application/appeal should proceed on the basis of the ES and its addenda considered by the Council in October 2007. It was submitted that in particular, the reversal of the traffic priorities that would result in all the vehicular traffic using the Lisvane Road route (other than buses and cycles), identified as Option C, represented a major amendment that should require the submission of a fresh planning application. There was concern that there had been inadequate time to consult the public and Council members fully and as such, prejudice would result. Moreover, approximately 60 letters from local residents sent in response to the revisions to the ES had been returned by the Planning Inspectorate, because they had been submitted after the deadline for representations stated at the PIM<sup>10</sup>.

15. In response, the appellants argued that the Council had been aware that consideration was being given to alternative highway options since January 2007 and that a revised ES would be submitted. This had been confirmed at the PIM in March 2008 when notice of the intended publication was given. A summary of the intended changes had been sent to the Council and to RAG at the end of March and discussions continued in April about their inclusion in the SOCG. Copies of the revised ES were then sent to the Council on 16 April 2008 and to the Welsh Assembly Government, with an advertisement inserted in the Western Mail on 24 April. The revised ES was placed in local libraries on 25 April 2008.

16. I stated that I considered that the requirements of the Environmental Assessment Regulations had been met as adequate time and opportunities had been given to enable those who wished to make comment about the revisions to do so. This was also evident from the written representations (300 +) and the submitted statements of evidence that referred to the proposed revisions<sup>11</sup>.

17. Having regard to the cases of *Wheatcroft V SoS*; *BT v Gloucester CC* and *Breckland*<sup>12</sup>, I indicated that the revisions were material alterations to the proposal, but ones that were capable of being considered as part of the appeal. Moreover, the appeal related to an appeal against the non-determination of a planning application and thus it remained a 'live' application. Whilst the Council and third parties objected to the consideration of the revisions contained in the ES, it was a matter for the decision-maker (the Minister) to decide whether to entertain and

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<sup>8</sup> See file correspondence from Cardiff CC dated 23.4.08; Harmers on behalf of RAG dated 21.4.08; Julie Morgan MP dated 6.5.08; Geldards on behalf of appellant dated 1.5.08; Lisvane Community Council 28 April 2008.

<sup>9</sup> Doc ID 5

<sup>10</sup> Doc ID 3; ID 6

<sup>11</sup> Doc ID.5

<sup>12</sup> Docs ID 8

consider the proposed Options. However, bearing in mind the concern of residents that many of their letters of objection to the revisions to the ES submitted after the deadlines for representations to be made stated at the PIM, I ruled that I would accept any letters concerning this matter until the 6 June 2008 in the first instance.

18. However, due to the concern raised by objectors to the planning application and to changes proposed in Option C, the appellants made arrangements to notify residents along Lisvane Road on the basis of those dwellings most likely to experience a material difference in traffic flows<sup>13</sup>. In addition, arrangements were made for notifications to be made through the Lisvane Community Council newsletter. In the context of these additional notifications, I then ruled that letters would be received up to the 1st July 2008. Approximately 156 letters were received within this deadline<sup>14</sup>. The Council and RAG would be able to make comments about any correspondence by 15 July 2008 and by the appellants by 29 July 2008. I indicated that any letters received after those dates would not be taken into account by me and would be referred to the Minister. Thus, I ruled that evidence concerning the revisions shown in Option C would be heard at the Inquiry and the matter would be placed before the Minister to decide whether or not the amendments would be considered and if so, what conclusions would be reached relating to them.

19. The Inquiry was also advised that due to the serious illness of the appellant's ecologist Dr Gibson of Bioscan, his submitted evidence and which had been co-written by Mr D Woodfield<sup>15</sup>, would be adopted by the latter as his own evidence for the purposes of the Inquiry.

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## **The Site and Surroundings**

20. Details of the site are provided in section 3 of the amended SOCG between the appellant and the Council<sup>16</sup>. The main body of the site includes the whole of Llanishen reservoir and surrounding embankments and grassland, together with the former Keeper's Cottage at the south-east end of the reservoir and the sailing centre and car park at the northern end. The site also includes a corridor from Keeper's Cottage across part of the Council-owned Nant Fawr meadows, behind Nos 129-151 (odd) Rhyd-y-penau Road, and taking in Nos 147, 149 and 151 Rhyd-y-penau Road to link to the existing highway network at the junction of Rhyd-y-penau Road and Cyncoed Road. At the northern end, the site includes a corridor along the private access from Lisvane Road to Council-owned allotments and on to the sailing centre. The length of access road from Lisvane Road to the allotments and the land either side of this are again in Council ownership.

21. Llanishen reservoir was completed in 1886 to supply water to the rapidly expanding docks area of Cardiff. It was part of the water supply infrastructure

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<sup>13</sup> Doc. CD 310

<sup>14</sup> Doc. ID 7

<sup>15</sup> Doc. CD 287

<sup>16</sup> Doc CD 269D

linking the Brecon Beacons with Cardiff<sup>17</sup>. The top of the embankment is raised above the height of the surrounding landform on all sides. The reservoir was constructed shortly after Lisvane reservoir, a smaller (8ha) adjacent body of water to the north-east, which is also in the appellant's ownership.

22. Llanishen reservoir is no longer operational as a supply reservoir for potable or industrial water, although much of the operational features and associated pipework and sluices remain intact and undergo regular maintenance and inspection under the requirements of the Reservoirs Act 1975. Inspections took place in 1994<sup>18</sup> and in 2008<sup>19</sup>. The reservoir land is privately owned by the appellant. Public access to the reservoir area is prohibited with a steel palisade fence having been erected around the top of the reservoir embankment.

23. A sailing centre, Llanishen Sail Centre, operates on the reservoir from premises at its north end, under a lease granted to the Council for a term of seven years from 24 June 1995. The appellant served notice under Section 25 of the Landlord and Tenant Act 1954 in January 2007 on the Council of its intention to terminate the tenancy of the sail centre premises on 1 August 2007, on the grounds that it intended to demolish or reconstruct the premises concerned<sup>20</sup>. Evidence presented by the Council<sup>21</sup> indicated that on 12 May 2008, the County Court confirmed two issues. The first was the landlord's right (and intention) to demolish the buildings on the site. The second was that the appellant could reasonably demolish the buildings without obtaining possession of the holding. The outcome of the case may result in the appellant demolishing the buildings used for the sailing centre, but whether these buildings are demolished or not, the Council will need to obtain a new lease to continue to operate from the centre.

24. Vehicular access within the site currently comprises a single width access road from Lisvane Road, which runs through woodland alongside the course of the Nant Fawr and around the north-east boundary of the South Rise allotments to the sail centre and a small car park next to Lisvane reservoir. The western margin of the site includes the course of the Nant Fawr, which runs as a partly open, partly culverted watercourse around the western and south-western sides of Llanishen reservoir, to continue southwards through woodland and open space to Rhyd-y-Penau Road and on eventually to Roath Park Lake. Significant parts of the site, including the vehicular access corridor from Lisvane Road, the impounded area of Llanishen reservoir and parts of the Nant Fawr corridor around the western side of the reservoir and at its southern end are shown as Zone C2 areas on TAN15 Development and Flood Risk: Development Advice Map ST18SE.

25. The appeal site also includes a predominantly wooded area of about 3ha at the southern base of the reservoir embankment, a corridor of Council-owned land

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<sup>17</sup> Doc. CCC16

<sup>18</sup> Doc. CCC 14 & 15

<sup>19</sup> Docs. CD 244

<sup>20</sup> Doc. CD 79

<sup>21</sup> Docs. ID 10a; CCC 20 & CD 258

across Nant Fawr meadows approximately 20m wide x 180m long, and the land comprising 3 dwellings at 147, 149 and 151 Rhyd-y-penau Road.

26. The majority of the appeal site comprises the water body of Llanishen reservoir: the enclosing grass-covered embankments, together with level grassed areas adjacent to the Nant Fawr on the western and south-western sides of the reservoir, form part of the Llanishen and Lisvane reservoir Embankments Site of Special Scientific Interest (SSSI), notified for its diversity of grassland fungi<sup>22</sup>. The SSSI has a total area of 6.2ha, of which some 4.7ha lies within the appeal site. The designation was confirmed on 5 May 2006. A subsequent challenge in the High Court to the notification and confirmation of the SSSI was dismissed on 26 January 2007. The water body of the adjoining Lisvane reservoir is a SSSI notified for its wintering bird population and was designated in 1972.

27. Other parts of the appeal site have local nature conservation designations. The area of Llanishen reservoir encircled by the embankments SSSI is designated as a site of importance for nature conservation (SINC) due to its populations of perfoliate pondweed and the stonewort *Nitella flexilis* and its significance as a breeding site for common toad. Llanishen Reservoir Grassland and Scrub SINC were designated due to its population of grass snakes and glow-worms. It also supports wood club-rush. The Council's Biodiversity Guidance<sup>23</sup> indicates that the former SNCI designation is now represented by SINCs.

28. The appeal site land crossing Nant Fawr meadows is part of the Nant Fawr Community Woodlands and Meadows, an area of pockets of secondary woodland of varying sizes interspersed with meadow areas containing a high diversity of plant species. The Nant Fawr Community Woodlands and Meadows form a publicly accessible corridor of open space around the south and east sides of the appeal site and extending northwards past Lisvane reservoir. The Friends of Nant Fawr assist in the management of these areas, including the provision and maintenance of footpaths and promoting its recreational use<sup>24</sup>.

29. No structures within the site are listed or locally listed. There are no areas of ancient woodland or protected trees within the site, and no hedgerows meeting the criteria prescribed by the Hedgerows Regulations. Although the site boundary includes part of a group of protected trees (G3), forming part of the Cardiff (Cyncoed Area) Tree Preservation Order 1967, no protected trees are affected by the proposed highway works.

30. The site is located just over 5 km north of central Cardiff. It combines with the adjacent Nant Fawr Community Woodlands and Meadows, Parc Rhyd-y-penau, Gwernybendy and Coed-ty-llwyd woodlands, South Rise Allotments and Lisvane reservoir to form part of an open corridor extending northwards from Roath Park along the course of the Nant Fawr and on to the open countryside beyond Llanishen and Lisvane reservoirs. The predominantly residential districts of Llanishen and Cyncoed lie on either side of this open corridor, with properties in Black Oak Road,

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<sup>22</sup> Doc. CD 101/104

<sup>23</sup> Doc. CD 20 & 21 - page 12 at paragraphs 1.4.19, 22 and 23

<sup>24</sup> Docs. RAG 1 & 2

Cyncoed Road, Rhyd-y-penau Road, Towy Road, Solva Avenue and South Rise having rear views across adjacent open land and the site at varying distances.

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## The Proposals

31. The proposals would involve the draining down of Llanishen reservoir and the re-profiling of the reservoir area to create new areas for residential development together with a smaller body of water for water sports use and a new wetland area for nature conservation purposes. Details of the site measurements including lengths of footpaths, cycleways and areas of open space are provided, together with a schedule jointly prepared by the appellant and Council<sup>25</sup>. The Design Statement provides details of the design concept and proposed treatments.

32. The proposals include:

• Development footprint of residential areas	7.3ha
• Lake	5.9ha
• Wetland	1.78ha
• Wetland Wildlife Education/watersports centre	0.3ha
• Formal recreational and equipped children's play area	0.6ha
• New woodland	1.11ha
• Retained woodland	2.45ha
• Retained SSSI	6.1ha (99.45%)
• Cycleways	3.8km
• New public footpaths	7.2km

33. The new lake would have a total area of 5.9 hectares with a surface level of approximately 38.9 metres, being about 8.2 metres below the top of existing embankments<sup>26</sup>. There would be 'beaches' with easy and safe access to the water and landscaped pockets at focal points along the lake shore and would include viewing platforms. The treatment of the lake edges would vary in style<sup>27</sup>. In parts, the lake would have a maximum depth of 6 metres to allow for sailing capsizing training; elsewhere and in proximity to the proposed boathouse, water depths of about 2 metres would be provided, shelving towards the shoreline<sup>28</sup>.

34. The proposed water sports clubhouse would be located at the north-east end of the lake and would be transferred to Cardiff County Council to continue to run activities. The facilities provided within the clubhouse would comprise changing and toilet facilities, training room, bar, office, kitchen and sail training simulator,

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<sup>25</sup> Doc. CD286; Doc. CCC17; Doc. ID 15 appendix 10

<sup>26</sup> Doc. CD 281

<sup>27</sup> Doc. CD 275

<sup>28</sup> Doc. ID.19 para 5.05; ID. 15 plan 1257-03-11

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together with internal and external storage areas and the base for the wildlife wardens. A slipway to the lake would be provided.

35. Public car parking would be set into the verge of the distributor road immediately to the south of the new lake and also to the south of the housing area and children's play area (about 0.2ha), to the east of the lake. Coach parking for two coaches would be provided adjacent to the northern recreational area (about 0.4ha including formal play area and 0.1ha of children's play area) connected to the wildlife wetland centre by a footpath. The formal recreational area would be suitable for junior football and other similar uses.

36. The residential element of 324 units would be arranged within a development footprint of 7.3 hectares at a density of 43d/ha. The units to the east of the lake would be 2 and 2.5 storey dwellings, with 3 storey buildings restricted to the western side. The housing slab levels would be set at 39-40m (AOD) on the eastern plateau and 40-42m AOD on the western plateau. Throughout the residential areas there would be footpaths and cycleways linking with the linear park and lakeside.

37. An area of 1.78ha of wetland, to complement the wildlife education centre (to be operated by the Wildlife Trust for South and South-west Wales), would be located between the north of the lake and the Lisvane reservoir and would comprise an area of reed bed with some deeper water channels surrounded by interconnected paths/broadwalks with appropriate interpretation information and cafe facilities for the public. Between the wetland and the lake an area of informal, open space with footpaths and cycleways would provide a link and separate the two elements of the scheme.

38. The proposal would provide general public access to the lake's edge and the lakeside walks and cycle path, but away from the sensitive SSSI reservoir embankment. Two areas of children's play equipment would be provided, one adjacent to the water sports centre and one in the south-east corner of the site. An area of 0.3ha of formal recreational space would be provided adjacent to the sailing centre which would be up-graded via the S.106 obligation.

39. A linear park would be located along the eastern edge of the scheme within and adjacent to the SSSI and to the east of the proposed residential area comprising 2.35ha and include new woodland approximately 410 metres in length and typically 54 m in width (excluding the woodland and SSSI buffer planting). The woodland would be above the level of the new housing separating the housing from the Nant Fawr meadows and the housing in Black Oak Road/ Cyncoed Road. Tree planting would be graded in terms of scale and species to respond to the adjoining land uses, including dense shrub planting to separate it from the SSSI. Northern sections of the linear park would include open grassland as open space with some tree planting and footpaths within its design. This would link to the wetland providing circular walks.

40. Three access options are now proposed as alternatives. All options run from a reconfigured roundabout at the junction of Cyncoed Road / Rhyd-y-penau

Road<sup>29</sup> around the south perimeter of the proposed lake and northwards to pass the existing sailing centre and allotments to link with the lane that joins Lisvane Road about 40 metres south of its junction with Crofta. It would thus cross the embankment to the existing reservoir that is included within the SSSI. Within the site of the existing reservoir, the perimeter road would run approximately 4 metres below the top of the embankment<sup>30</sup>.

41. Access Option A<sup>31</sup>: The route across the Nant Fawr meadows would adopt the existing landform following a shallow depression to minimise any significant cut and fill. It could comprise either a 6.1 metre wide carriageway with kerbs and a 3 metre wide combined footway/cycleway in bound aggregate, with a low grassed mound to either side on either side, or alternatively the 6.1 metre carriageway could have a 2 metre footway with a combined footway/cycleway along the line of the access road to the former Keeper's Cottage<sup>32</sup>. (This variation could apply to each Option). A 20mph speed limit would apply. It would serve the whole development with no private motor vehicles joining Lisvane Road, with bus traffic being controlled by a bus gate. Through this northern section the carriageway width would be mostly 4.1 metres with a 2 metre wide footway, with some localised tapering<sup>33</sup>.

42. Three lighting options are proposed for the route across the meadows, from full lighting of the carriageway and footway (that could be dimmed between 2100 and midnight and then switched off), to no lighting at all. These details are common to all three access Options, but could include low level post lighting to mark the footpath/cycleway<sup>34</sup>.

43. Access Option B<sup>35</sup>: The route would be configured in the same manner as in Option A, but would differ in respect of the position of the bus gate and the treatment of the north link to Lisvane Road. Here the carriageway would be 6.1 metres wide with a 3.5 metre wide shared footway/cycleway. In this Option, 25% of private motor vehicles would use the northern access, with 75% using the southern route.

44. Access Option C<sup>36</sup>: The route would be configured in the same manner as above, save for the proposed alternatives to the northern section and the junction with Lisvane Road and proposed off-site improvement works. In this option, all private motor vehicles would use the northern access, leaving the southern access for use by buses, pedestrians and cycles. A bus gate would be positioned at a point where the road, having crossed the Nant Fawr meadows, crosses the reservoir

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<sup>29</sup> Doc CD 269A – figures 15A; 18A; 25A

<sup>30</sup> Ditto - figure SCG23A; ID.15 – figure YOR.125709b

<sup>31</sup> Doc. CD269A - figure SCG23A

<sup>32</sup> Ditto - figure SCG15A or figure SCG31A

<sup>33</sup> Ditto - figure SCG 18A

<sup>34</sup> Ditto -figures SCG33A, 34A, 35A; 37C; ID.25 appendix C; Doc. CD 284

<sup>35</sup> Doc.CD 269B; figure SCG18B

<sup>36</sup> Doc. CD 269C revised; figure 15C; 18C; 36C

embankment. This could be adjusted to allow car access to the play area in the south-east corner if required. At the northern end, the configuration would be the same as in Option B with junction and off-site highway works on Lisvane Road.

45. The proposal is supported by a range of off-site contributions to be effected through the Unilateral Undertaking<sup>37</sup>. Common to all three access Options would be the provision of a tiger crossing on Rhyd-y-penau Road<sup>38</sup>, the up-grading of Keepers Cottage Lane car park, and contributions to the Cardiff Bus company to provide and subsidize (through bus passes for residents) a new bus route through the site<sup>39</sup>. In addition, provisions are made for open space contributions and the transfer of ownership of the reservoir and the maintenance of the wildlife areas to Trusts<sup>40</sup>. Affordable housing would be provided as agreed with the Council at a 30% minimum ratio, split between social rented units, supported housing units and low cost house ownership units. In respect of Option C, financial contributions would also be made towards nearby highway improvements as proposed by the Highway Authority including cycle routes in Thornhill/Heol Hir and safer routes to schools.

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### **Statements of Common Ground (SOCG)**

46. Four SOCGs have been produced<sup>41</sup>. The first three relate to each of the access Options in turn and the fourth, to the planning and other matters. These confirm that the County Council, as planning and highway authority, raises no objections in respect of any of the access arrangements subject to the imposition of suitable conditions as referred to later. Section 6 of the fourth SOCG (D) sets out the matters not in dispute and confirms that the signed Unilateral Undertaking would secure:

- the proposed water sports centre;
- a contribution towards the long term management and maintenance of the non-residential parts of the site in compliance with LP policy 8, SP policies C3, C4 and H6, deposit UDP policies 1H, 2.46, 2.47 and 2.48, and the Cardiff SPG on biodiversity;
- the provision of satisfactory linkages by foot, cycle and public transport to and from surrounding residential areas, schools and recreational routes in compliance with LP policies 14,16,17 and 18, SP policies MV2, MV6 and MV12, and deposit UDP policies 1C;1F, 1J, 1K, 1L and 2.7;
- the provision of recreational open space and equipped children's play space in compliance with LP policy 31, deposit UDP policies 1J and 2.26, and the open space SPG;

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<sup>37</sup>Doc. CD 306

<sup>38</sup> Doc. CD 269A-C – figure SCG 29

<sup>39</sup> Doc. CD 298/300

<sup>40</sup> Doc. CD268

<sup>41</sup> Docs. CD 269A-D : Doc. CD 269C - Option C was revised during the inquiry

- the provision of affordable housing in compliance with LP policy 24, SP policy H5 and deposit UDP policy 2.23, and
- the provision of the necessary improvements to school facilities in accordance with deposit UDP policy 2.27.

47. It should be noted that paragraph 6.53, relating to the engineering attributes of the existing reservoir, has been superseded by a more recent Reservoir Panel Engineer's Report which is addressed below.

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## **Planning Policy**

48. The development plan comprises the South Glamorgan (Cardiff Area) Replacement Structure Plan 1991-2011 (adopted in April 1997) and the City of Cardiff Local Plan, adopted in January 1996. Although the intended period of the local plan was only to 2001, it remains part of the development plan and with the structure plan forms the basis for development control decisions. There is a statutory requirement to have regard to the development plan in determining these proposals, and to make the determination in accordance with the provisions of the development plan unless there are material considerations which indicate otherwise.

49. The Structure Plan (SP) policies<sup>42</sup> relevant to consideration of the proposals, and the matters they address, are as follows:

- EV1 (Towards sustainable development): Favours proposals which encourage sustainable practices and are consistent with other development plan policies, including proposals which contribute to biodiversity; which help to reduce vehicle movements or encourage the use of public transport, cycling and walking; and which involve the reclamation of derelict or degraded land for appropriate beneficial use.
- EV2 (Urban regeneration): Favours the regeneration of derelict or degraded urban land for appropriate residential, leisure and nature conservation uses, subject to consistency with other development plan policies.
- MV1 (Location of new developments): In order to minimise traffic movements, favours developments at locations which, amongst other things, are well served by public transport and are easily accessible for those wishing to travel other than by car, provided that they conform with other development plan policies.
- MV2 (Commuted payments): Seeks developer contributions towards any improvements to the transport system needed as a result of the proposed development.
- MV6 (Development of public transport): Favours the development of public transport schemes.
- MV11 (Car parking): requires all new development to have adequate parking provision.
- MV12 (Public access): Favours the development and improvement of cycle routes, public footpaths and bridleways.
- MV13 (Equality of access): States that measures will be taken to improve access to bus stops, railway stations and car parks and to remove conflict with traffic.
- H1 (New dwelling requirement): States that land will be made available for 22,300 new dwellings in Cardiff for the period 1991-2011. The demand will be met by giving priority to the development of sites with planning permission or identified/defined in the development plan; and giving priority to the development of sites in Cardiff Bay, the

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<sup>42</sup> Doc CD.17

redevelopment of suitable cleared sites within the urban area and the replacement of unfit and substandard housing.

- H4 (Special housing provision): Points to the need for housing development proposals to have regard to the requirements of particular sections of the community.
- H5 (Affordable housing): Gives priority to meeting affordable housing needs in appropriate locations.
- H6 (Community facilities): Addresses provision for community facilities needed as a result of housing developments.
- B2 (Improvement of environmental quality): Favours measures to improve the environmental quality of the urban fabric, especially in the city centre, inner urban area and older housing estates.
- B4 (Greening of urban areas): Favours the protection, conservation and enhancement of open spaces which are important for amenity, recreation and/or nature conservation within the built environment. Opposes development of such areas, except for sites identified for development by other policies. Favours the creation of a coherent network of green spaces and corridors, with particular protection given to river corridors. Favours tree planting and landscaping schemes where appropriate.
- C3 (Sites of nature conservation value): Resists development proposals if they are likely to cause unacceptable harm to the nature conservation value of, amongst other things, a SSSI.
- C4 (Local sites of nature conservation value): Favours the identification, conservation and enhancement of local nature reserves and sites of nature conservation value, subject to conformity with other policies.
- C7 (Woodland and hedgerows): Favours proposals to protect, improve and manage existing woodlands, tree cover and hedgerows. Particularly favours extensions to existing woodland cover in certain cases, and resists development which would unacceptably harm woodland sites or hedgerows.
- C8 (Protection of water resources): Favours protection and improvement of the water environment. Opposes development which would unacceptably harm water features or associated interests.
- T1 (Tourism and recreational developments): Favours tourist, leisure, sports and visitor accommodation developments, subject to compliance with a range of criteria, particularly within the city centre and Cardiff Bay.
- T3 (Informal leisure and recreation): Encourages access to and enjoyment of the countryside by: promoting recreational use of country parks, established leisure destinations and accessible woodland; safeguarding and enhancing recreation routes; and protecting and managing features which make the countryside attractive for informal recreation.
- CL2 (Flooding risk): Opposes development in areas potentially at risk from flooding unless it can be demonstrated that adequate measures will be taken for flood protection and prevention.

50. The Local Plan (LP)<sup>43</sup> policies relevant to consideration of the proposals, and the matters they address, are as follows:-

- 7 (Protection of open space): Permits development proposals involving the loss of recreational or amenity open space only where they would not cause or exacerbate a local or city-wide deficiency of recreational open space and the open space has no amenity or nature conservation importance; or the developers provide satisfactory compensatory open space.
- 8 (Sites of nature conservation or geological value): Resists development which would cause unacceptable harm to the nature conservation or geological value of, amongst other things, a SSSI.

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<sup>43</sup> Doc CD.16

- 9 (Development in areas at risk of flooding): Opposes development in areas at risk of flooding unless flood defence issues are assessed as satisfactory.
- 11 (Design and aesthetic quality): Seeks to ensure that all new development is of a good design which has proper regard to the scale and character of the surrounding environment and does not harm the aesthetic quality of the area.
- 13 (Energy use): windfall development permitted only where resultant traffic flows, energy use and emissions would be minimised and where well located to public transport.
- 14 (Facilities for public transport services): Requires the design and layout of proposals to accommodate necessary public transport services facilities.
- 16 (Traffic calming): Requires the design and layout of proposals to accommodate necessary traffic calming or traffic management measures.
- 17 (Parking and servicing facilities): Requires proposals to provide parking and servicing facilities in accordance with adopted guidelines.
- 18 (Provision for cyclists): Requires proposals to make proper provision for cyclists.
- 19 (Provision for pedestrians): Requires proposals to make proper provision for pedestrians.
- 20 (Provision for special needs groups): Requires proposals that may be used or visited by the general public to make proper provision for members of the community with special needs.
- 21 (Land for housing): Allocates land for housing at a series of locations defined on the proposals map.
- 24 (Affordable and special needs housing): Seeks elements of affordable housing and provision for special needs groups on new sites of more than 50 dwellings where there is evidence of local need.
- 25 (Affordable housing): Provision favoured at redevelopment site and other suitable housing sites within the built up area.
- 31 (Residential open space requirement): Seeks provision of a satisfactory level and standard of open space on all new housing developments.
- 45 (Sport, recreation and leisure facilities): Favours proposals for the development of sport, recreation and leisure facilities at, amongst other locations, Cardiff Bay, and in locations other than those specifically identified in the plan, subject to certain provisos.
- 53 (Neighbourhood facilities for recycling purposes): Favours proposals for the development of neighbourhood facilities for the reception of household waste for recycling purposes, subject to considerations of scale, location, design, amenity and transportation.

51. The Council has also produced supplementary planning guidance (SPG) on open space; waste collection and storage facilities; biodiversity; and access, circulation and parking requirements. It has also produced draft SPG on affordable housing; developer contributions for school facilities; and locating waste management facilities<sup>44</sup>.

52. The deposit draft version of the Cardiff Unitary Development Plan (UDP) 1996-2016<sup>45</sup> was published for public consultation on 28 October 2003. It contains a similar range of policies relevant to the proposals to those in the extant development plan. Amongst other things, the deposit draft document contains policies and proposals relating to the protection of open space, particularly where it has nature or historic conservation, amenity or landscape value, and the identification of a strategic recreational route along the Nant Fawr corridor in conjunction with a significant urban extension proposed in the plan between Pontprennau and Lisvane, to the north-east of Llanishen reservoir. However,

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<sup>44</sup> Docs. CD 20, 21, 22, 23, 24, 25, 26, 29,

<sup>45</sup> Doc. CD 18

although the UDP was placed on deposit, it was not altered in response to representations received, which included objections to numerous policies and paragraphs including aspects of the matters referred to here.

53. On 21 July 2004, the Strategic Environmental Assessment (SEA) Directive came into force requiring all public bodies to undertake an SEA on their plans and programmes. Moreover, on 13 July 2004, Part 6 of the Planning and Compulsory Purchase Act 2004 that provides a framework for a new system of Local Development Plans (LDPs) came into force. In the light of these changes, the Council decided not to take matters forward in relation to the UDP in order to commence work instead on its Local Development Plan. Consequently, the weight to be attributed to the draft UDP is limited, although it reveals relatively up-to-date intentions of the Council.

- Policy 1A (location of new development): seeks to minimise harm to the environment and to make best use of previously developed land (pdl).
- Policy 1B & 2.20: requires good design in all developments.
- Policy 1C (Planning Obligations): to secure improvements in infrastructure, facilities or services.
- Policy 1D (Pdl): 60% of new dwellings should be on pdl.
- Policy 1H & 2.46: seek to protect and where possible, enhance, SSSIs.
- Policy 1J (Open space): seeks to protect/enhance areas of open space
- Policies 2.26, 2.7 and paragraph 2.26.4 relate to provision of open space, recreation and leisure facilities.
- Policy 1K (Transportation): expresses priorities to minimise travel demand and to facilitate walking, cycling and public transport.
- Policy 1L: expresses priority to improving public transport.
- Policy 1N (car parking): expresses the objective of reduced car parking in line with public transport improvements
- Policy 2.21 (pdl): this favours the use of pdl with residential use permitted where residential amenity will be acceptable and community facilities readily acceptable.
- Policy 2.23 (affordable housing) requires the provision of affordable housing where there is evidence of need: affects sites of 25 or more dwellings and sites greater than 1 hectare.
- Policy 2.27 this seeks improvements to schools in conjunction with residential development.
- Policy 2.58: seeks to resist development that would harm the efficient operation of the road network or public transport services.
- Policies 2.43 & 2.45 seeks to resist harm to the character and quality of the landscape.
- Policy 2.48 : avoid harm to habitats or other landscape features identified as priorities in bio-diversity plans
- Policy 2.49 seeks to protect open space and provides for criteria for exceptions.

- Policy 2.61: resists development that would unacceptably harm the quality or quantity of water resources, including surface water.
- Policy 2.66: seeks to protect development from the risk of flooding.
- Policy 2.64 seeks to protect local amenity, the character and quality of the countryside or interests of nature conservation/landscape importance.

54. The Local Development Plan (LDP)<sup>46</sup> is at the Preferred Strategy stage and Interim Sustainability Appraisal Report, with the reports being published in October 2007: the period for consultation was until November 2007.

- Policy 1: Provision will be made to meet the requirement for new homes, infrastructure, investment, jobs and innovative design in accordance with sustainable development principles.
- Policy 2: All development to demonstrate sustainable good design.
- Policy 4: Provision will be made for 22,750-24,750 new dwellings in Cardiff between 2006-2021, mostly on pdl.
- Policy 5: Sustainable communities will be promoted with a mix of dwellings sizes, types and affordability and where necessary, securing (inter alia) transport provision, schools, recreation and other community facilities.
- Policy 6: Where need is demonstrated, 30% provision of affordable housing will be sought.
- Policy 10: Priority will be given to improving accessibility by a choice of means of transport within and to Cardiff and developing an integrated transport system.
- Policy 11: Priority given to improving public transport infrastructure.
- Policy 15: Land will be safeguarded to create (inter alia) the Nant Fawr Strategic recreational route to help deliver the aims of the Cardiff River Valleys Initiative.
- Policy 20: The character and quality of the Cardiff landscape will be protected and, where appropriate, enhanced.
- Policy 23: Areas of open space that are important for amenity, recreation, nature conservation or historic conservation will be protected and enhanced, particularly the river corridors and other networks of open space that provide wildlife corridors and facilitate access between the urban area and the countryside.
- Policy 27: Supports renewable energy where there is no unacceptable impact on conservation, areas of nature conservation and landscape importance and local amenity.

55. Within the Cardiff Local Transport Plan 2006-2016<sup>47</sup>, attention has been drawn to objective 10 which seeks to achieve greater use of public transport, walking and cycling and less use of car and truck.

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<sup>46</sup> Doc. CD 19

<sup>47</sup> Doc. CD 162

56. National planning policy is contained primarily in Planning Policy Wales (PPW) (March 2002)<sup>48</sup> supplemented by Technical Advice Notes (TANs)<sup>49</sup>.

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### **Planning History**

57. The current application/appeal follows the Minister's decision dated 15 August 2007 in respect of a similar development proposal at the same site<sup>50</sup>. Other planning history is included in the SOCG<sup>51</sup>.

58. Also of relevance to the context for the consideration of the current proposal is the outcome of an application to Cardiff County Council under S.13 of the Commons Registration Act 1965 to register the Nant Fawr meadows as a New Green<sup>52</sup>. The report dated 9 July 2008 of the Inspector appointed by the Council, Mr Vivian Chapman QC concludes that the application should be rejected because use of the land by local people over the relevant 20 year period had not been 'as of right', but rather under a statutory right of recreation applicable to the land by virtue of its acquisition by the Council in 1948 under Section 164 of the Public Health Act 1875. By letter dated 12 August, the Council advised the current appellant's solicitor that the Council had accepted the Inspector's conclusions and decided that the application to register the Nant Fawr meadows as a village green failed.

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### **The Reservoirs Act 1975 Report**

59. At the opening of the Inquiry, reports on the statutory inspection of the Llanishan and Llanishen reservoirs dated May 2008 were submitted<sup>53</sup>. The Reports had been received by the appellant's solicitor on the 19 May and following instructions were forwarded to the Council and to the Planning Inspectorate on 23 May 2008. The Council objected to their admittance as late evidence. The appellants argued that the Reports were highly relevant and held implications for the future of the existing reservoir even if no development were to be proposed. Moreover, as the Reports included statutory requirements to be carried out under Section 10 of the Reservoirs Act 1975, they could not be ignored.

60. I stated that given the statutory requirements included within the Reports, the Minister must be advised of these and that they would be admitted to the Inquiry. The Council and others would be given an opportunity to comment upon the reports during the Inquiry should they wish to. Given the circumstances that gave rise to the commissioning of the Reports, I report upon them at this juncture before the moving on to parties' cases.

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<sup>48</sup> Doc CD 13

<sup>49</sup> Docs. CD 36-52

<sup>50</sup> Doc. CD 101

<sup>51</sup> Doc. CD 269D

<sup>52</sup> Doc. CD 312

<sup>53</sup> Doc. CD 244

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61. The circumstances leading to commissioning of the Reports by Prof. A Hughes (the RAI) are set out by the appellant's solicitors in appended documents<sup>54</sup>. The Inquiry was advised that the statutory inspection of the reservoirs and the subsequent Reports were not commissioned to support the planning application; rather they were considered necessary by the future owners of the embankments including the various wildlife areas and wildlife centre<sup>55</sup>, in order to be satisfied of the infrastructure's condition. As a result, Prof. Hughes was engaged to carry out an inspection of the reservoirs and to report upon their condition. Given the Reports' recommendation, he appeared at the Inquiry as an independent witness, in order to inform participants and subsequently, the Minister, of the reasons for the recommendations. Although this was arranged by the appellants, the intention was not to lend support for any parties' cases.

62. The Reservoir Act Inspector (RAI) is a member of the All Reservoirs Panel, appointed until May 2011 and is an advisor to water companies, individuals and the UK Government in respect of dams and reservoirs. The survey and preparation of the Reports were carried out under the provisions of the Reservoirs Act 1975 and would normally occur every 10 years. The reservoirs were last inspected in April 1994 and 2004<sup>56</sup>. The recommendations relating to Llanishen reservoir are required in the interests of safety, have statutory status and their implementation will be enforced by the Environment Agency<sup>57</sup>. No measures of this nature apply to the Lisvane reservoir.

63. Sections 10.6 and 15.2 of the Llanishen Report recommend that in view of the uncertainty of the condition of the pipework and valves and the lack of any definitive map of the pipework passing through/on the bed of the reservoir, the pipeline drawing should be up-dated to reflect the recently discovered abandoned valve. A survey should thus be undertaken of all valves and pipework to ascertain their condition and layout: this would require the temporary emptying of the reservoir and this must take place within 12 months (of May 2008).

64. In answer to questions posed by the appellant, the RAI explained that although his recommendations in paragraph 10.6 refers to 'a change in the operating regime ... as a result of the change of use of the reservoir', his recommendations have nothing to do with the proposed development. The Report was carried out earlier than the normal 10 year anniversary because of the possible change of ownership: it mattered not who that was, what future uses were being proposed, whether the existing owner intended to drain down the reservoir to a lower level, or the impact upon sailing and other activities. The RAI stated that the reservoir must be emptied in any event as soon as practicable. Being a 'category A' reservoir, the failure of which would have serious consequences in terms of potential loss of life, this should occur within 12 months. If this gave rise to grave operational difficulties, this might be negotiable but would not extend beyond 3

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<sup>54</sup> Docs. CD 282 and CD 177

<sup>55</sup> Nant Fawr Ecology and Education Trust – Doc. ID 17

<sup>56</sup> Docs. CCC14 & 15

<sup>57</sup> Doc. CCC13

years. He was aware of the nature conservation interest, but stated that safety must take precedence.

65. The RAI explained that he had been advised by the on-site reservoir engineer that pipework within the system downstream of the reservoir and of a similar age had burst and had needed repair. Pipework also linked to the Lisvane reservoir through the separating embankment. As Llanishen is an impounding reservoir, the only way to inspect pipework within and beneath its structure is to empty it. In answer to questions by the Council, the RAI explained that some information regarding the location of pipework sought in the 1994 inspection report had not been provided. Furthermore, full visual inspections of the shafts had not been possible and the operation of the valves had proved extremely difficult. Coupled with the bursts downstream and the frailty of the 18" pipework network downstream, being of the same vintage, these factors gave rise to concern.

66. Whilst noting the comments of a fellow Panel Inspector<sup>58</sup>, the RAI stressed that the recommendations followed a survey of these reservoirs and are site specific. Inspection by CCTV cameras sent up the pipework network would not be possible due to distances involved and would still fail to provide evidence of the condition of the pipes and valves. Likewise, the use of alternative survey techniques, such as by divers or pressure testing would not be appropriate here, because of their lack of the necessary experience and secondly potential destroying pipework. Drain down was the only practical way to carry out the necessary survey. Physical contact with the metalwork was required to establish its structural condition and this could involve extracting samples of the metal to establish levels of corrosion. Full draining would be required to reveal any scouring at the bottom of the valve inspection shafts. The RAI confirmed that in the event of a pipe rupture between the two reservoirs, one could not be confident that safety would be ensured. The control valve is within the separating embankment and thus half of the pipework is under pressure: any leakage would be into the embankment and affect its structural stability. Even the discontinuance of the reservoir's function completely and the grouting up of pipework and valves between the reservoirs would be potentially problematic and would require the drain down of both reservoirs to ensure that it was effective.

67. The drain-down would take approximately 1 month to ensure the stability of the embankments and its refilling by rainwater could take between 3-8 years. The RAI was unable to confirm that other sources of water for refilling were still available, both in terms of physical connections and abstraction licences. Despite being referred to in the ES, the insertion of piezometers within the SSSI to measure stability would not be necessary. Such measuring devices would only be needed if there were to be concern about the downstream shoulder of an impounding dam and not in the present temporary circumstances.

68. The RAI explained that under the Reservoirs Act 1975, the obligations to ensure the safety of the structure and to carry out any remedial works rested with the owner. Thus provision should be made for predictable and contingency funds. He estimated that the following costings could be expected: (a) supervising engineer's annual fee - £600pa; (b) S.10 inspection (ten yearly) - £2000; (c)

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<sup>58</sup> Doc. CCC13

insurance - £5000pa; (d) maintenance costs/grass cutting/pipework care - £10-30,000pa. Contingency sums could include some valve replacement and discharge channel works at approximate costs of £150k and £50k within the next 60 years.

69. The RAI commented that the proposal would reduce the risks to a 'minute probability of failure' of the embankments, because of the proposed lower level of water and the resultant volume and head of water. The proposed drain down would have to be overseen by a Reservoir Panel Engineer and may require some new valves. Likewise, the construction of any coffer dams to retain wildlife, if required, would have to be constructed in a manner to avoid vibration and under the supervision of the Panel Engineer.

### **Consequential legal submissions arising from the Reservoirs Act report**

70. In the light of the statutory recommendations made under the 1975 Act, the Council and the RAG proffered the view that temporary drain down was not inevitable, although likely, but that other permissions, consents and/or procedures could be required for such an operation. Given the obligations under the new tenancy for the sailing centre [Doc. CD 312], the Council now concedes that any drain down would also be temporary.

71. The Council and RAG considered that two possible further procedures were relevant: planning permission and environmental assessment. Reference was made in the ES<sup>59</sup> to the prospect of the use of further piezometers by the appellant to ensure the safety of the process introduced as a result of technical advice. This could be development that might require planning permission. Although the RAI stated orally that this was no longer necessary, this statement was made in advance of any investigation of the embankment's stability. However, it remained clear that the operation was one that was plainly likely to be supervised, if not by the RAI, by the site engineer or equivalent. At the time of such works, the Council will need to be persuaded that this is not an operation requiring environmental assessment and thus an operation that requires planning permission. Everything depends on the facts at the time. In the current state of evidence, it cannot be confidently conclude that no planning permission would be required for the process.

72. The Council and RAG cited the 1990 Act that provides a definition of development that requires planning permission in section 55 that includes engineering and other operations. No definition of "engineering operations" is provided except to extend it to include "the formation or laying out of means of access to highways"; and "means of access" includes "any means of access, whether private or public, for vehicles or for foot passengers, and includes a street" (s.336(1)). In *Fayrewood Fish Farms v. Secretary of State for the Environment and Hampshire* [1984] J.P.L. 267 the court took the view that an "engineering operation" could be an operation which would generally be supervised by an engineer (including traffic engineers as well as civil engineers) but that it was unnecessary that it should actually have been so supervised. The Council and RAG submit that it is likely that drain down would fall into this category since supervision is likely to be required to ensure the continued safety and stability of the reservoir embankments and the integrity of the inner clay core. Further the

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<sup>59</sup> Doc. CD 96 para 6.3.3 page 59

object of the exercise is to undertake an engineering inspection of the reservoir's pipework and valves etc.

73. The Council and RAG suggested that the scope of the final part of the definition of operational development ('other operation') is uncertain. *In Coleshill and District Investment Co. Ltd v. Minister of Housing and Local Government [1969] 2 All E.R. 525*, the House of Lords rejected a submission that "other operations" should be construed according to the ejusdem generis rule and thereby confined to the same class or genus of operations as building, mining and engineering operations. Beyond the very general notion of physical change, it proved impossible to identify any class or genus to which those three types of operation belonged. In practical terms the area of physical operations not already falling under the other three headings are those of a scale too small to be able to qualify as, for example, an "engineering operation"; and in many cases will be operations for which deemed permission is conferred by the General Permitted Development Order 1995, particularly Pts 1 and 2 of Sch.2. In an appeal decision at [1981] J.P.L. 135 the Secretary of State ruled that the tipping of soil and other material for the purpose of raising the level of land was not an "engineering" operation (compare *Northavon DC v. Secretary of State for the Environment (1980) 40 P. & C.R. 332*), because the nature of the works had not been properly planned in advance, but it was nonetheless an "other" operation to which the deemed permission of Class VI of Sch. 1 to the General Development Order 1977 (now Pt 6 of Sch. 2 to the 1995 Order) (agricultural works) did not extend, and permission was therefore required. See also *Beronsstone Ltd v. First Secretary of State [2006] EWHC 2391 (Admin)* where 554 marker stakes hammered into a field were capable as a matter of fact and degree of comprising "other operations". Thus, if, contrary to the above, the operation is not an engineering operation it is likely to qualify as another operation for these purposes and thus constitute development requiring planning permission.

74. The Council and RAG suggested that the next question is if planning permission is required, is whether there is a deemed planning permission for the operation in question? Section 55(2) of the 1990 Act provides that:

*(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land -*

*(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;*

75. This exemption could not apply as the appellant holds the reservoir not in its capacity as a statutory undertaker but as a private land holding and the reservoir is not part of the apparatus of its undertaking. However there remains the general deemed planning permission grant by schedule 2 part 10 of the Town and Country Planning (General Permitted Development) Order 1985:- Part 10: Repairs to Services:

*Permitted development: The carrying out of any works for the purposes of inspecting, repairing or renewing any sewer, main, pipe, cable or other apparatus, including breaking open any land for that purpose.*

76. As noted above works for the purposes prescribed in this Part do not require planning permission if undertaken by local authorities and statutory undertakers, by virtue of the 1990 Act s.55(2)(c). This Part grants planning permission for cases where the works are to be carried out by others. For a detailed analysis, see the planning appeal reported at (1995) 10 P.A.D. 651, where the view was taken that this Part extended to the carrying out of works to drains and drainage channels, including works to clear and unblock a drain. That approach was upheld in *Doncaster BC v. Secretary of State for the Environment (1996) 72 P. & C.R. D16* where the court held that the ordinary sense of the word "sewer" encompassed an open drain or ditch. Moreover, a "sewer" did not have to carry sewage. The court took the view that the purpose of this Part was to allow landowners to carry out repair work on their land without having to obtain planning permission, and that it was not appropriate to draw fine distinctions: the provisions should be construed so as to include all channels, drains, ditches and sewers, whether open or enclosed.

77. Accordingly, to the extent that the drain down operation is required to inspect the pipework lying on the bed of the reservoir, the Council and RAG stated that it may be the subject of a deemed grant of planning permission under part 10 of the Order.

78. Furthermore, the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 prohibit the grant of planning permission to EIA development without taking environmental information into consideration. To the extent that the automatic grant of planning permission under the 1985 Order is in conflict with this requirement, it should be borne in mind (a) the Directive 85/337/EEC takes effect if this is a public or private project likely to have significant effects on the environment and (b) the effect of regulation 3(10) of the GPDO is to withdraw the automatic grant of permission under part 10 where the process is such that it requires environmental assessment.

79. Regulation 3(10) is as follows:

*Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the EIA Regulations") is not permitted by this Order unless:*

*(a) the local planning authority has adopted a screening opinion under regulation 5 of those Regulations that the development is not EIA development;*

*(b) the Secretary of State has made a screening direction under regulation 4(7) or 6(4) of those Regulations that the development is not EIA development; or*

*(c) the Secretary of State has given a direction under regulation 4(4) of those Regulations that the development is exempted from the application of those Regulations.*

80. The Regulations define EIA development by reference to development that falls within either schedules 1 or 2 to the Regulations. The appeal proposal is not within schedule 1.

- Schedule 2 defines the screening criteria likely to have significant effects by reference to the characteristics of the development such as, inter alia, the size of the development, the use of natural resources, or the risk of accidents.
- Secondly, by reference to the location of the development in particular having regard to the absorption capacity of the natural environment including nature reserves and parks.
- Thirdly, regard is had to the characteristics of the potential impact including its geographic extent, magnitude and complexity, probability of the impact and its duration, frequency and reversibility.

81. In the Council and RAG's view, the issue is therefore one of fact and degree. Here the exercise involves the emptying of a reservoir some nearly 24 ha in area containing many litres of pure water in circumstances where the water body as such is identified as an important feature in the landscape structure of the city and the water body is identified as a SINC for features that are likely to be lost as part of the exercise. The reservoir would lie empty in the landscape in the period which it will take to refill. It would therefore be a rational and proportionate judgement to identify the proposed operation as one that is likely to have significant environmental effects that requires environmental assessment before it may lawfully proceed.

82. In response, the appellants note that at the highest, the Council and RAG suggest that the drain down operation might be EIA development: it cannot be assumed that it would be, especially as it is agreed that the operation would be temporary. If the Council and RAG are right, there is already full evidence concerning the matter and demonstrating that drain down would be required as a result of the proposed development. As to whether planning permission would be required, the only expert evidence available, that of the RAI and Mr Swanson, indicated that the drain down operation would simply involve opening the sluice gates, the flow from which could be regulated. The requirement of the supervising engineer stems from the Health and Safety requirements of the Reservoirs Act, but does not mean that planning permission is required. All the cases cited involved physical engineering works requiring an engineer which clearly is not the same position which involves the inspection of the reservoir's bed. If subsequently planning permission is required for physical works, this is a separate matter after the event of the drain down.

83. As to issues concerning the piezometers, the RAI explained that their installation would not be needed. The ES had assumed the worst case position that that they would be, but this does not over-rule the expert evidence now presented.

84. Therefore in the appellant's view, the drain down of the reservoir does not require planning permission and thus the question relating to EIA development does not arise.

### **Submissions relating to Human Rights issues**

85. Both orally and in writing, a third party raised arguments concerning an interference with her human rights and those of her neighbours. As set out in her letter dated 28 June 2008, [Doc. ID. 7] Ms Magill cites contraventions of the Human Rights Act 1998 and in particular Articles 2 - the right to life, 5 - the right to freedom and security and 8 - the right to respect for family and private life. Ms Magill maintains that these articles include the right to be safe and for public bodies to protect citizens from foreseeable harm and prevent public bodies from making decisions that hinder existing access to family homes. If the Minister were to consider approving either Options B or C, under Article 8, Ms Magill stated that third parties should be alerted so that redress through the Courts could be sought to avoid a contravention.

86. In response, neither the Council nor RAG offered comment other than the Council stating that *Lough v SoS [COA 2004 EWCA s1z 905]* establishes that third party effects may engage in Article 8 and that planning decision-making cannot be dealt with separately from Human Rights matters.

87. For the appellants, it was submitted that the third party's Human Rights would not be violated, because as made clear in *Alconbury - R v Secretary of State for the Environment, Transport and the Regions, ex p Holding and Barnes plc [2001 2AL ER 929]* the planning process provides a statutory process to deal with individual rights in relation to developments. Moreover, the opportunity for judicial review offers further safeguards.

88. In this case, the third parties' land would not be directly affected by the proposed development. Matters relating to the indirect effects arising as a consequence of the development (visual, access, traffic, character of Lisvane Road) all relate to the merits of the planning application currently being considered. The alleged impact upon the third parties' (and others') safety of the proposed access arrangements are addressed through the evidence and the questioning of highway witnesses from both the Council and the appellants. Their conclusions are that safety would be improved. Thus there would be no violation of Article 8.

89. As to matters concerning the associated signage along Lisvane Road, this would be the subject of another statutory process, which the Council confirmed in evidence<sup>60</sup> would require advertisement and consultation. As to noise effects, there would be no material change and in terms of light sweep, as the third parties' houses are at a higher level than Lisvane Road, there would be no material effect.

90. In conclusion, the appellants submitted that whilst the generalities of the third parties' points are well-made, they all go to the merits of the case being considered following a lengthy and detailed examination of the evidence, including those arguments and questions put by the third parties themselves. Thus there has been and would not be any violation of their human rights.

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<sup>60</sup> Mr Dawson

## **The Case for Western Power Distribution Ltd:**

The main points of the case are as follows:

### Introduction and summary:

91. The proposal is to redevelop a redundant reservoir currently with minimal active and beneficial use and to transform it and its surroundings into a variety of beneficial uses for the benefit of the people of Cardiff as a whole.

92. Any future use of the site must be suitable, viable and deliverable. It must therefore be based on development for housing, there being no other reasonable alternative capable of making beneficial use of the site viable. Other uses have been tested and found wanting<sup>61</sup>. The only reasonable alternative to continued redundancy and minimal beneficial use of the site for the foreseeable future is for it to be developed in part for housing, with a positive, permanent managed use to be made of the rest of the site, with numerous public benefits being effected to a multiplicity of interests and for it to become one of Cardiff's greatest ecological, recreational and publicly accessible resources. It would complement the Nant Fawr meadows, thereby raising that area's status from a local resource, as recognised by the Inspector reporting upon the 'village green application', to one of strategic importance<sup>62</sup>.

93. Other than in relation to sailing and objections by the County Council as planning authority, there are now no objections to the proposals from any statutory consultee or public body on any other ground. As required by the Planning and Compensation Act of 2004, the proposals for housing and recreation are accepted to be in a highly sustainable location and are themselves highly sustainable, accessible by all sustainable means, introducing movement and transportation links to, through and across the site which would be of significant benefit to the residents of Llanishen, Lisvane, Cyncoed and to North Cardiff as a whole.

94. At best, sailing use of the reservoir is limited and its longer term future is uncertain. The provision of new recreational facilities including a wetland area and the wildlife and water sports centres on the site, with a cafe, licensed bar and other ancillary facilities, would more than compensate the loss of the current and potentially proposed sailing facilities, which are substandard. The funding of the provision of sailing facilities at Cardiff Bay would more than adequately compensate for the interruption and loss to higher order sailing, which would occur in any event with drain down and, importantly, without compensation.

95. The reservoir must be drained down for inspection and maintenance in the foreseeable future. This would inevitably affect its ecology as well as its recreational use for sailing.

96. As for the Council's<sup>63</sup> ideas for an acceptable fallback use to include leisure and recreational uses of the site, or for it to remain in its existing state, these have

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<sup>61</sup> Doc CD 97 Appendix 1

<sup>62</sup> Doc CD 312

<sup>63</sup> Evidence of Dr Hockaday

been tested and have been found in the ES not to be economically viable. To 'do nothing' is not only economically unjustifiable but would also lead to ecological degradation of the site and would therefore be contrary to policy both in PPW and in the development plan.

#### Context of the site

97. The Minister and the Inspector after the last Inquiry considered that the site (including the embankments) did not constitute "previously developed land" because of its nature conservation value and because of its integration with the natural landscape. But it is quite unrealistic to regard the site as simply being an ordinary "greenfield" site. This is a site of major infrastructural development, the use of which is now long redundant (for over 30 years). Yet although it is redundant, it still attracts all the liabilities – and presents the same potential danger to public safety if not properly maintained – that are associated with its status as a reservoir. That is a highly unusual situation for a non-PDL site. Furthermore, it is a highly accessible and sustainable site: the Council agreed the site was the equal of any site outside the city centre<sup>64</sup>.

98. Also, there are the unique constraints that this particular reservoir faces. Its embankments are a SSSI and the land immediately beyond is a further SSSI. The site enjoys no lawful public access, yet unlawful access causes damage to these areas, a situation that proper management associated with the development would address. Moreover, there are no significant public viewpoints into the site from the surrounding area. Its sole current function is for sail training, which is accepted to be at a minimal level and which faces a highly uncertain future.

99. There is a continued risk to reservoir safety: continued maintenance is required<sup>65</sup>. Trespass and vandalism may have a significant effect as the embankment walls' coping is dislodged, allowing water to enter behind the stonework. Without any beneficial use of the site and associated maintenance and the presence of wardens and natural surveillance, the risks associated with the site being unused and without continuous natural surveillance by the presence of people can only be considered to be increased<sup>66</sup>.

100. The existing state of the reservoir and surrounding land act as an impenetrable barrier, creating significant and on-going severance of the Nant Fawr corridor, without any likelihood of lawful access being re-opened in the absence of development. As explained in the 'village green' inquiry report<sup>67</sup>, the Nant Fawr meadows were acquired as public open space, yet public access to them is limited and severed by the reservoir, contrary to the strategic role of the Nant Fawr corridor.

101. The Council's and others' doubts about the appellant's intentions suggest that: (a) there is no need to drain down of the reservoir (b) there is no need for

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<sup>64</sup> Confirmed by Dr Hockaday in cross examination

<sup>65</sup> Orally confirmed by Prof. Hughes

<sup>66</sup> Example of fire damage June 2008 – Doc CD 305

<sup>67</sup> Doc. CD. 312 para 131

fences preventing public access to the appeal site and the reservoir (c) it is irresponsible for the appellant as land owner to exclude the Friends of Nant Fawr or other volunteers from the site, and (d) the fact that two trustees of the Nant Fawr Education and Ecology Trust (NFEET) are, or have been associated with the appellant in some way, casts doubt upon the bona fides of the future management of the site for ecological benefit.

102. Each of those suspicions was fully rebutted by the appellant's witnesses in evidence. But the very fact that they have been voiced on behalf of the Council is a vivid illustration of the failure to take a realistic view of the future of the site, and the determination to cling on to wholly unrealistic pipedreams and unsubstantiated claims concerning the appellant's true intentions.

103. In respect of drain down, the statutory inspection came about as a direct result of the Council's express requirements for ownership issues to be resolved, and the trustees of the NFEET's due diligence<sup>68</sup>. The RAI's evidence demonstrated complete independence and integrity in his approach to the risks presented by the reservoir; his considered view was that a drain down of the reservoir would be required within 12 months. The Appellant has no choice but to comply with the statutory direction.

104. With regard to the fencing, there is a clear liability associated with open bodies of water, and a wholly legitimate interest on the part of the appellant in minimising that liability. It was wholly in accordance with Health and Safety advice to do so<sup>69</sup>. The Design Statement also makes reference to the footpaths and desire routes evident in the immediate vicinity<sup>70</sup>. Even when wardens were employed, the results of trespass was testimony to the site being close to a residential area and that there was a clear and continuing desire to access the site because of the general lack of open space in the area. Such wardens cannot be there 24 hours/day and on all parts of the site<sup>71</sup>. It is fanciful to suppose that some future owner might (in the absence of development) remove the fence and expose himself to those liabilities. The Appellant also wished to fence Lisvane reservoir but has been unable to do so because of the terms of the agreement under s.39 of the Wildlife and Countryside Act 1989.

105. As to the exclusion of volunteers, it is wholly unrealistic to expect that any landowner would permit unsupervised volunteers to enter onto the site to maintain it: there are clear liability implications for the owners of the land if volunteers are to be on the site. At no stage has the Council agreed to supervise, fund or accept liability in respect of such volunteers. This is a site with clear health and safety requirements over and above the norm. Even in normal circumstances such as on the Nant Fawr corridor, the Council requires there to be supervision of volunteers when using machinery in any event.

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<sup>68</sup> Doc. CD282 & Mr Derek Moore cross examination

<sup>69</sup> Doc 97 -ES Vol 2 appendix 2

<sup>70</sup> Doc ID 15. appendix 10 page 18 & 19

<sup>71</sup> Doc 97 – ES Vol 2 appendix 2, pages 3 & 4

106. The evidence of Mr Derek Moore demonstrated the commitment of the trustees to the management of the site for ecological and recreational ends, and their recognition of its importance as a resource for the city of Cardiff. His confidence in the proposals was transparent; his experience and personal commitment was also self-evident. With the further commitment of the Wildlife Trust and both their and CCW's satisfaction with the proposals, there is no basis in evidence for the Council to seek to cast doubt upon the efficacy of the proposals.

#### Benefits of development

107. The benefits of development would be wide-ranging and substantial: it would provide an accessible and sustainable high quality recreational resource, fully integrated within the Nant Fawr open space corridor and opening it up to full public access. At present, the areas of open space running from Llandennis Road in the south to Rhyd-y-Blewyn Farm in the north (including Parc Rhyd-y-penau to the west) extend to 24.3 ha: access to the reservoir itself is limited only to the relatively few using the Llanishen Sailing Centre. With the provision of new areas of open space provided by this development, there would be an additional 20.24 ha of open space (not including the 5.9 ha lake), including the provision of 7 ha of informal recreation space. Taken together, there would be some 25 ha of amenity open space, integrated into the existing open space which would become an area of fully 50ha of open space. This opportunity would not just meet the needs of the residents of the new development, but would be available to all in the locality and would also reinforce the attractiveness of the area from a city-wide perspective. The provision of the informal recreational space would also cure the existing deficit in Llanishen ward and in the combined wards of Llanishen, Lisvane and Cyncoed.

108. The watersports lake would replace the current austere water environment with a more natural lake environment fringed in places by vegetation and in other places with beach areas. Canoeing, windsurfing, scuba diving and fishing could all be accommodated alongside the sailing, as well as other activities such as model boat sailing. It would emulate the highly successful and popular Cosmeston Lake in South Glamorgan, but the Llanishen lake would be more accessible and sustainable. These recreational possibilities would be complemented by the watersports centre, with facilities for supporters, family members and spectators of all ages and mobility to enjoy the use of the lake, the ecological areas, reedbeds and their edges in comfortable surroundings, as well as the opportunity to relax in the café to be provided in the adjacent wildlife centre.

109. Footpaths and cycleways within the site would be created and a substantial addition made to cycleways off-site by way of financial contribution secured by the unilateral undertaking. Further, there would be a new high frequency bus service, fully funded by the proposals for 15 years, which the residents of the new housing would be directly encouraged to use through an innovative scheme. Residents would be required to purchase two season tickets for bus use per household, which would encourage them to use the bus. The service would operate at 15 minute peak period frequency, allowing effective public transport routes to and from work and school (and every 30 minutes off-peak). The public transport scheme would be an exemplar in transport policy terms.

110. The ecological biodiversity of the site would be safeguarded, especially the SSSIs and the grasslands SINC, and significant benefits would be delivered in

circumstances where they will otherwise inevitably decline. The creation of the wetlands would provide in a single step 75% of the original Local Biodiversity Action Plan target for wetland provision in the Cardiff area, and six times that of the new target. In addition, the creation of the new lake and wetlands would be likely to give rise to a new SINC within a relatively short time after its creation. Furthermore, with the provision of paths and boardwalks with appropriate interpretation information, a significant education facility would be available to visiting members of the public and school trips. Those opportunities would be maximised by the provision of a high specification wildlife education centre. The benefit of education would flow on to encourage the use and interpretation of the whole of the Nant Fawr corridor, not just of this site.

111. The housing would provide a high quality environment meeting all policy requirements of high environmental specification, with 30% being affordable housing, fully in accordance with policy and local requirements, providing for a significant unmet need, with an emphasis on the social rented and shared ownership markets and special needs units. As at Cardiff Bay, housing can act as a catalyst for other recreational developments in a coordinated and integrated way. Notwithstanding the other differences in terms of quantum and quality of the open space, the linear park and protection afforded to the SSSIs etc, the current proposal would thus be very different from the last inquiry scheme where housing was proposed hard up against the Nant Fawr corridor and found visually unacceptable. The proposal is now complimentary to the function of the meadows to provide a wider benefit.

112. The landscaping proposed throughout the scheme would be of high quality and could be conditioned in terms of design and layout. The height and layout of the proposed residential development has been carefully and specifically designed to minimise visual impact, preserving views from the adjacent Nant Fawr meadows and its character as a semi-rural environment.

113. Moreover, for the first time, the areas of Cyncoed and Lisvane would be directly linked by the sustainable means of an extensive network of footpaths and cycleways, and by the provision of a more direct and frequent bus service to and from Lisvane, currently only poorly served by a convoluted bus route running only once per hour, and Thornhill.

114. The net result is that the proposed development would provide a positive, sustainable and socially inclusive vision for the future of what is currently an underused urban resource, currently representing an obstacle to the full and beneficial use of the Nant Fawr open space corridor.

#### The differences with the previous scheme

115. All points of criticism raised by the last Inquiry proposal by CCW, the Inspector and the Minister have been resolved in the current scheme. Moreover, unlike the previous Inquiry, specific evidence has been adduced relating to the impact upon sailing. The current proposal should also be seen in the context of

the 'village green' inquiry findings confirming the non-strategic role of the Nant Fawr corridor<sup>72</sup>.

116. All the embankments would be retained save for what is considered by all to be an insignificant effect: a 0.5% reduction. Importantly, the Embankments SSSI and the Lisvane SSSI would both benefit from long-term management. This is particularly important and urgent in the case of the Lisvane SSSI to avoid its decline into an unfavourable condition. There needs to be a material shift in the attraction of persons, in particular dogwalkers, away from Lisvane SSSI to diminish disturbance and for there to be a reasonable chance of restoring its attractiveness to breeding and over-wintering birds. Because of the recent designation of the Embankments SSSI, planting of the embankments to create a visual shield is no longer an option. There is now no objection by CCW to any aspect of the proposals, which reflects a clear and radical change to their previous position of objecting in particular to significant areas lost to the Embankments SSSI under the previous proposals.

117. The proposed housing area has been reduced and density increased from 30 to 43 dwellings/ha. The housing has been lowered in relative height, both by lowering the housing plateaux and by reducing storey heights that would result in much reduced or negligible visual impact from all around. The previously proposed four-storey buildings in the south-east corner of the site have been removed altogether. Indeed, those facts taken with the retention of the embankments and with the maturing of increased planting, has the result that the development would no longer be visually seen from the Nant Fawr meadows<sup>73</sup>. This represents a major improvement over the previous scheme when assessed against the previous Inspector's comments and criticisms of the previous scheme. Users to the south of the site would not be conscious of built development either.

118. These matters amount to radical and beneficial change from that which was previously proposed, a matter which the Council conceded and is now common ground<sup>74</sup>. They also conceded that it is fully compliant with the Cardiff Residential Design Guide SPG objective 10.3 [Doc. CD 28]. The previous Inspector criticised the layout on the last occasion, but the concept would be very different, with a much more appropriate lake frontage designed for public access. Reflecting the comments of that Inspector, houses would face the lake rather than back onto it, and be set back from it. Further, lake edge treatments include shingle beaches and vegetation, would provide a much enhanced experience for pedestrians, cyclists and recreational users alike. This was also acknowledged by the Council to be a materially better arrangement.

119. A notable addition would be the eastern linear park, some 50 metres wide, and highly likely to be of considerable attraction to residents, with views from an elevated position over housing, landscaping, and the lake. Vistas would appear as a surprise as walkers travelled from north to south. This would be a significant and contrasting benefit to the rest of the Nant Fawr corridor and a material difference

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<sup>72</sup> Doc CD 312

<sup>73</sup> Doc ID15 appendix 10 : Design statement – pages 79/80 long cross sections; CCC6- visible roofs

<sup>74</sup> Dr Hockaday

to that proposed in the previous scheme. There would also be a qualitative enhancement of the remaining areas of open space: for example, the western recreational route would provide excellent viewing of the Embankments SSSI, enhanced further by the provision of associated interpretative facilities. As the Council's witness acknowledged in cross examination, unlike the route proposed on the last scheme, it would not be narrow, and its users would not see any development to the east; again acknowledged to be a radical difference to the previous scheme and an improvement<sup>75</sup>.

120. The impact of the access road over the 1ha field to the south-east of the site is not comparable to that of the previous scheme. It would be respectful and have a sympathetic relationship with the field. The change in its alignment and grading, the creation of mounds to reduce its visibility and (with Option C) the reduction in its width, the low-level directional lighting, and the low level of traffic upon it, would cumulatively reduce its impact to a minimum. The Council acknowledged this as a radical difference to the previous scheme and accepted that it would be significantly less intrusive to adjacent residents, as well as to all users of the Nant Fawr open space, the corridor and the Meadow than was previously proposed.

Reasons for refusal 1 – open space:

121. By its first reason for refusal, the Council considers that the proposed development would be in conflict with LP policy 7 and SP policies B4 and C8<sup>76 77</sup>. The Appellant disagrees.

*Interpretation of the policy:*

122. The approach to policy 7 should be informed by the following considerations:

(a) as agreed by the Council, the policy does not prohibit development on open space land, as desired by RAG. Rather, it expressly permits such development in the event that either of the conditions it specifies is met. One of those conditions is that the developers provide satisfactory compensatory open space in terms of quantity or quality;

(b) the provision of "satisfactory" compensatory open space may be achieved not just by the provision of a like-for-like quantitative replacement. It may also be achieved by making an alternative provision more appropriate to the needs of the local population<sup>78</sup>. Thus the loss of an area of low value amenity open space can in principle be satisfactorily compensated by providing a lesser area of higher quality recreational and amenity open space. This approach was agreed by the Council's witness in cross-examination.

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<sup>75</sup> Doc CD97 ES appendix 6, figure 6.8 cross sections

<sup>76</sup> Doc. CD 16 page 31; Doc 17

<sup>77</sup> Reference is also made to policies 1.J and 2.49 of the Draft Deposit UDP, but all parties are agreed that the UDP has little weight, and its policies do not substantively alter the analysis to be undertaken in accordance with the development plan. PPW policies are agreed to be reflected in the Local Plan policies.

<sup>78</sup> Doc. CD 16, para 3.3.9

123. The position is not analogous to Green Belt policies where there is a presumption of harm. The policy 7 (and SP B4 & C8) is designed to protect against significant demonstrable harm: if there is not significant harm, or if there is overall benefit, the policies do not stand in the way of development.

124. The Council agreed that SP policy B4 is to be read as seeking to fulfil the same purpose as policy 7. In particular, the words "*except on those sites identified for development by other development plan policies*" in the second sentence of the policy is to be given a wide interpretation (so as to embrace all development which is favoured by other development plan policies) rather than a narrow interpretation (so as to embrace only those sites specifically named in a development plan policy). To do otherwise would give rise to conflict between the Structure Plan and Local Plan because, the narrow interpretation of policy B4 would have the bizarre consequence that policy 7 could not be used to justify (for example) the provision of a wildlife centre in open space, or a sailing centre, even in circumstances where compensatory open space was provided. That cannot have been intended, particularly given the fact that policy 7 is intended to be of general application (not confined in its effect to a named list of sites), and has not been applied by the Council in that way.

125. Furthermore, the effect of the Structure Plan cannot effectively "stop the clock" to prevent development beyond that which is expressly foreseen and mentioned in the Local Plan of 1996, which covered the period up to 2001. There must be the capacity for site by site identification of development which complies with Local Plan policies beyond that cut-off date – otherwise the Council would effectively have imposed a moratorium on further beneficial development simply by reason of its own failure to adopt an updated local plan.

126. Moreover, the Structure Plan cannot have been intended to conflict with the Local Plan in that way, given that the Local Plan and Structure Plan were adopted by the same authority and within close proximity of each other (1996 and 1997 respectively). Even if there were to be conflict, however, the Local Plan would prevail.

127. In any case, the Local Plan has never been stated by the Council not to be in general conformity with the Structure Plan. Had the Council considered it to have been so, it would have had to prepare a statement in respect of the Local Plan specifying the respects in which the Plan did not so conform. The duty to prepare such a statement is found in regulation 30 of the Town and Country Planning (Development Plan) Regulations 1991 (SI 1991/2794), which were in force when the Structure Plan was adopted in 1997.<sup>79</sup> In the absence of such a statement, priority is given for all purposes to the Local Plan as set out in regulation 31 of the 1991 Regulations.<sup>80</sup>

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<sup>79</sup> The 1991 Regulations remained in force in Wales until 15 October 2005, the appointed day under Article 5(1) of the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005 (SI 2005/2722).

<sup>80</sup> These regulations mirror the statutory provisions in section 35A and 46(10) of the T&CPA 1990, which govern the position where the SP and the LP are produced by different authorities.

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128. Against this background, the Council's witness concurred with the appellant's view that SP policy B4 and LP policy 7 are aimed at the same objectives and that there is no reason to approach the two policies differently.

129. Policy C8 does not add significantly to the analysis either. It is aimed at protecting the benefits of water resources including nature conservation and recreation. It is not a policy to prevent redevelopment of redundant reservoirs. If there is no harm or overall benefit to nature conservation and recreation, there cannot be any conflict with it. As agreed by the Council, it is a matter of balance overall.

130. The Council's Open Spaces SPG<sup>81</sup> specifically supplements policies 7 and B4 and provides valuable guidance as to how the amenity importance of a site should be assessed. The SPG provides that the amenity value of open space is to be assessed in relation to the following factors:

- (a) whether the open space in question is located where "significant 'visual access'" can be gained by the general public and contributes to the visual character and environmental quality of the surrounding area, and if so, whether the proposals would adversely affect the appearance of the open space;<sup>82</sup> and
- (b) whether the proposed development would cause unacceptable harm to areas of 'leisure amenity value'<sup>83</sup>.

#### *Application of the policy*

131. There would be no harm and there would be overall benefit in terms of the effect on open spaces: the proposed development would transform the quality of the open space in the area to the benefit of both the local population and the city as a whole.

132. The Council's reason for refusal asserts that the conflict with those policies lies in the "serious harm" to the quality, integrity and coherence of "this part" of the Nant Fawr open space corridor, in relation to three points:

- (a) the site's strategic importance as forming part of the Nant Fawr open space corridor;
- (b) the site's 'significant amenity importance' for its users and those residing close by and overlooking it;
- (c) the site's importance for its nature conservation value.

133. Each of those points is overstated in terms of the effects of the proposals and thus the weight to be attached to any of those objections is no more than minimal. The proposals would not cause serious or significant harm as alleged. The following points are relevant in this context.

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<sup>81</sup> Doc. CD 23 paras 1.1 and 1.5

<sup>82</sup> Doc CD.23, para 3.8

<sup>83</sup> Doc CD.23, para 3.9

134. The starting-point in assessing the value of the open space is the Open Spaces SPG. In cross examination, the Council's witness agreed that the site is categorised as amenity open space not recreational space for the purposes of the assessment. The Council's proposition that the assessment is not appropriate for open spaces which have some level of recreational use, but are excluded from the definition of the recreational open space in the SPG, is not supported in either the LP or the SPG itself. In fact it is directly contradicted by the last sentence of paragraph 3.7 of the SPG and by Appendix E paragraphs E.1, E.2 and E.6. Neither is the proposition supported by the Council officers who were responsible for its authorship and who are responsible for its application: the Council's planning policy manager expressly confirmed to the appellant's planning witness that it applies to both recreational and amenity open space assessments, and had in fact been applied in such a way.

135. There is currently no significant visual access available to the general public.<sup>84</sup> Views of the existing water body are confined to long-distance views, and there are only glimpsed views from the surrounding area. While there may be amenity value to those who use the reservoir for sailing, such use is minimal. Views from private residences are not ones which are available to the general public, nor from gardens or principal living rooms. Where views from dwellings occur, they tend to be available from first floor windows only. As to leisure amenity, the use made of the reservoir is minimal. Therefore, the existing value of the site within the reservoir embankments is limited and not of significant importance to the public using or living in the area.

136. As to the alleged "serious harm" to the quality, coherence and integrity of the amenity value of the reservoir and site, the Council's planning witness conceded that there would be no significant visual harm arising from the proposed development. The built development would be confined to that area within the embankments and would be moved further away than in previous schemes from surrounding areas of public open space, namely the Nant Fawr meadows and Parc Rhyd-y-penau. This would avoid entirely the harmful visual effect identified by the Inspector at the last Inquiry. Other than the access road, the development would not be seen or heard from outside the embankments.

137. The Council relied upon an argument that despite the fact that no-one would be sensually aware of the built development from any public viewpoint, they would "know it was there". It is impossible to attach weight to that vague notion, particularly in circumstances when those walking in the Nant Fawr meadows would not have any sensual experience of the development at all. It would not be seen or heard, except when crossing the access road. Even then, they would not be able to see the built development. This would not be "serious harm" as alleged. It is impossible to contend that in circumstances where the Nant Fawr meadows are already bordered along their eastern side entirely by existing and highly visible housing, the mere crossing of a potentially little used road would transform the existing character of the area. The Council's witness' view appeared in part to have been conditioned by his inaccurate assessment of the visibility of the buildings from

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<sup>84</sup> See Doc. ID 22 paras 6.3-6.5 in particular, ES Doc CD 97 section 8 photographs.

outside the site, and by the erroneous belief that the access road would run along the top of the southern bund.

138. The Council's planning witness also sought to attach weight to the limited views of built development from private first floor bedrooms that might be available until the landscaping mitigation measures became established. But those views are ones which (as acknowledged) fall outside an assessment of visual amenity undertaken in accordance with the SPG, and as set out above, those views are not ones to which significant weight is generally attached. Furthermore, the mitigation measures proposed, in particularly those in the form of planting along the top of the eastern side of the bund within the linear park, would be effective within a comparatively short period of time, some 5-7 years. In addition and in any event, in the near future any existing views of the water body would be interrupted by reason of the reservoir's drain down.

139. Otherwise, owing to the existing fairly dense and mature woodland belt on the edge of the Nant Fawr meadows, to the proposed significant woodland belt within the site itself (immediately adjacent to the Nant Fawr meadows), to the trees and vegetation within the linear park as well as the thick woodland belt beyond, there would be no significant visibility into the site from the residential development on Rhyd-y-penau Road or on Black Oak Road. Nor would there be for the users of the Nant Fawr meadows. This represents a material and significant change from the position at the last Inquiry.

140. As to the effect of the access road itself, every step has been taken in the design to minimise any visual effect on the 1 ha field which it would cross, including the careful grading of the road and the creation of mounds to reduce its visibility. The end result is that the presence of the road across the field would be of minimal effect in visual amenity terms, as conceded by the Council's planning witness in cross examination. This too is a material and significant change from the last scheme at the last Inquiry.

141. The effect on nature conservation is discussed in relation to the third reason for refusal below where it is noted that far from inflicting "serious harm" on the nature conservation value of the site, the development would deliver significant benefits. Without the development, the site is likely to degrade. Moreover, the Llanishen Reservoir SINC would be lost in any event because of the required drain down. That is also a material change from the position at the last Inquiry. However, its significance is not confined to those policies dealing expressly with nature conservation interests (such as LP policy 8), for as the Council's planning witness confirmed, nature conservation benefit or the lack of unacceptable harm also have an effect on LP policy 7 and SP policy B4.

142. Finally, the effect on the strategic importance of this part of the Nant Fawr open space corridor, independent of any effect on its visual integrity. The potential elements of that importance were agreed to be functional, physical and the effect on severance.

143. In relation to each of those heads, there would be a benefit. The development would benefit the functional integrity of the corridor, because it would allow public access in perpetuity and greater recreational use of the site (one function of the corridor), greater (in fact new) managed access to and through the

site (another function of the corridor), and a net benefit to biodiversity and nature conservation (a third function of the corridor). Thus there would be a greater number of reasons for the public to visit the site (watersports, the wetland centre, informal recreation), and a greater ability to do so (the creation of access in perpetuity, the provision of bus, cycle and foot routes through the site, the provision of car parking, the compliance with the DDA 1995). Alongside those benefits, it must be recognised that there is no certainty about the existing level of access and recreational use continuing (which amounts only to the limited access for sailing), nor for the ecological and nature conservation value remaining constant and not degrading over time.

144. As to physical integrity and severance, the Council's complaints encompassing those of other objectors including RAG, amount to only two. The first is that the development's access road would sever the Nant Fawr corridor. The second is that it would reduce the freedom with which children and dogs might use the 1ha field. Both of these complaints suffer from the same flaw: they are based on a too narrow a focus on the 1 ha field itself.

145. With regard to severance, the Nant Fawr corridor is already substantially severed by built development, including roads such as Rhyd-y-penau Road and Llandennis Road, which are far more intrusive than that which is proposed across the 1 ha field (particularly if Option C were conditioned, but also if Option A or B were adopted).<sup>85</sup> Even taking the Council's artificial approach of considering only that part of the Nant Fawr corridor which lies to the north of Rhyd-y-penau Road, the proper approach is to consider the effect of the development as a whole, not merely the access road.

146. Overall, the development would dramatically decrease severance: at the moment, the appeal site acts to sever the corridor, effectively acting as an impenetrable barrier. That effect is illustrated by the fact that the Nant Fawr meadows are currently "virtually unvisited" by the residents of Lisvane/postcode CF14 [Docs. CD 302 and ID 20 appendix 6 at page 3 and the table on page 4 in which the meadows do not appear]. This evidence was not available to the Minister on the last occasion. The removal of that barrier would be a significant benefit not only in recreational terms, but also by reason of the linking of the communities of Lisvane, Llanishen and Cyncoed, providing more choices for places to shop, worship and engage in recreation, as well as increasing the ease of other forms of social interaction between communities. These were accepted to be significant benefits by Mr Kelly of the Lisvane Community Council and another resident<sup>86</sup> remarked "I have crossed the site – to me it would be a benefit." It would also significantly increase sustainability. That result is wholly consonant with the key policy objective in Planning Policy Wales for the fostering of social inclusion, providing a more accessible environment for everyone.

147. As to the effect on small children and dogs crossing the 1 ha field, the effect has again been overstated. Small children and dogs already have to be supervised on the approach to Keepers Cottage Lane, given that it remains in

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<sup>85</sup> It is also to be noted that there appears never to have been a statement in relation to the severance of the corridor when the car park accessed by Keeper's Cottage Lane was in operation.

<sup>86</sup> Mr Henson's cross examination of Mr Waldren

occasional use by vehicles. Furthermore, under Option C, the proposed road would be particularly lightly trafficked. This minor effect is clearly able to be confined to that one field and in the event of the Council choosing to close Keeper's Cottage Lane entirely, which the Council's planning witness considered would be a natural reaction, the net effect would simply be that of moving the minor interruption of the field. Against all that, must be balanced the new play facilities and recreational open space which would become available to all users, including those with small children and dogs. The weight that should be attached to the severance objection is minimal.

148. Much emphasis was placed by the Council on the assertion that the development would harm the existing "semi-rural" character of the Nant Fawr meadows, although in cross examination the term "semi-urban" in character was agreed to be equally applicable. The Council said that the effect of providing the access road and the "general awareness" of the unseen and unheard housing within the reservoir embankments over that area, would be to transform it into something more like an urban park. On the basis of the analysis set out above, and the Council's witness' multiple concessions in cross examination, that claim should be seen to be wholly misplaced.

149. The Council's witness' objection that when viewed on an Ordnance Survey map the corridor would be narrowed<sup>87</sup>, cannot itself amount to a finding of harm to policy 7 in the LP or SPG. The policy's objective is not to keep open space free from all development in the same way that a green belt or green wedge policy would. As stated above, if the open space's functional integrity would not be harmed, the proposal is not contrary to policy. What is important is not a cartographer's depiction on a map, but the effect on the ground to users and observers. The Ordnance Survey map does not illuminate the recreational, visual amenity or nature conservation value of the corridor, nor serve to illuminate the corridor's integrity. Nor is there policy support for the assessment of development in that way. Thus the point adds nothing to the analysis.

150. The Council's "strategic" objection accordingly can be reduced to an exaggerated view of the effect of the references to the Nant Fawr open space corridor in paragraph 3.3.7 of the Local Plan and paragraph 3.11 of the Open Spaces SPG. Those paragraphs refer to the fact that the valleys of the rivers Ely, Taff, Rhymney, and Nant Fawr provide continuous corridors of open space linking the urban area with the countryside. It is said by the Council and others that those corridors are important to the character of the local area and in the context of the whole city. But it is important to note the following:

- (a) those paragraphs, and moreover the policies to whose application they provide guidance, do not protect all areas of the open space corridors as if they were green belt or green wedges. Nor was such a policy proposed in the emerging UDP. Nor is there any other proposal for such protection. There is no presumption against development. Each proposal must accordingly be assessed on its own merits;

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<sup>87</sup> See Doc . ID 9a appendix (f)

- (b) they do not provide that beneficial development should be deemed to be unacceptable;
- (c) they refer to the strategic significance of the open space corridors as a whole. It does not follow that each and every part of each open space corridor carries a special status as "strategic open space" or higher level of protection than that afforded by LP policy 7 itself;
- (d) in response to the Council's proposition that while the compensatory open space provided might be apt to improve local deficiencies of public open space, it is not apt to remedy the loss to the city as a whole of the area of strategic open space, the appellant does not accept that the appeal site currently provides its full strategic role in that corridor. The compensatory open space would not be just of local benefit: anybody using the corridor would be able to divert into the site and use the compensatory open space. The reclassification of open space [e.g to provide more informal recreational open space] cannot only be of local value: it would have a strategic value as of a corridor linking the countryside with the city.

151. The Council's approach also fails to engage the fall-back situation: by refusing planning permission, nothing would be done to further the objectives of the open space policy. If degradation is more likely to result, in particular in terms of nature conservation due to lack of management, and if something must be done to preserve the existing situation, 'to doing nothing' is not an answer: it would not be an acceptable alternative and would be contrary to policy.

152. Thus the question is how well does this part of the open space corridor, as cited in the reason for refusal, fulfil its function, and what effect would this development have on this part of the open space corridor's contribution to that function?

153. In answer to that question, the correct approach is to adopt the approach set out above – to consider the visual, physical, functional effects (including access, recreation and nature conservation) and the effect on severance, and to note that in each of those areas, this revised application would produce significant benefits.

154. The wrong answer to that question is to invent a level of policy protection for the appeal site over and above those matters – effectively to regard them as green belt or green wedges, in the absence of any policy support, existing or proposed, for that approach. That has been the approach of the Council for which there is no support in policy and that should be rejected.

155. It is against that background of minimal harm and/or overall benefit that the question of whether "satisfactory compensatory open space" would be provided should be addressed.

- (a) It would be inappropriate to attempt to replace the existing low value amenity open space and shortfall of recreational open space on a like for like basis. It would not be valuable to do so. Instead, in principle, the appropriate response to the site is to increase the value of the open space. That would be achieved:

- (i) there would be significant improvement in formal recreational open space and children's play areas and an increase in quantitative provision of 0.3ha of each;
  - (ii) some 7.2ha of new informal recreational open space would be provided, with the result that the development would make up the whole of the combined deficit for informal open space in Llanishen, Lisvane and Cyncoed, allowing informal/passive activities such as walking, dog exercising, jogging and nature studies, linking into the Nant Fawr meadows open space and the open space corridor more generally<sup>88</sup>; and
  - (iii) the development would provide 25ha of amenity open space which would fulfil the essential criterion of being visually accessible to the general public and would contribute to the visual character and environmental quality of the surrounding area<sup>89</sup>.
- (b) The development would provide an increase in both the quality and the quantity of usable open space. There is a significant increase in the visibility of the open space, and the ability to use it whether for kickabout football, children's play, or simply for an evening walk. In addition, the creation of the linear park significantly increases the value of the open space within the red line of the application site.
- (c) There is no dispute as to the quantities of open space that would be provided<sup>90</sup>. The Council's subsequent note [Doc. CCC17] does not detract from the SOCG. Its table to the left on CCC17 simply provides an interpretation of how the various areas sit with NPFA categories<sup>91</sup>, and as such is of limited assistance. The table to the right is not of assistance, as it is based on a hybrid of the SOCG and the NPFA standards.
- (d) The Council's planning witness sought to suggest that the contribution was less valuable because the land was not "new", but represented land to be changed from a non-use to its use by the public. It is clear from the previous Inspector's report<sup>92</sup> where the issue of loss was discussed, that additional land did not have to be found, because the policy says that development could improve the existing space. This is borne out still further by the SPG and LP<sup>93</sup>. This objection should not carry any weight. As was acknowledged in cross examination, there is no doubt that the increase in access, coupled with the "ownership" by the community, would be major benefits: guaranteed access to land would be "a major planning benefit". Those benefits would be still greater when the land would be also be managed by

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<sup>88</sup> See Doc ID22 paras 6.76-6.79, CD 23 page 25 and SOCG CD 269D para 6.20

<sup>89</sup> As per Doc. CD 23 para 3.8

<sup>90</sup> Doc CD 269D: SOCG page 17

<sup>91</sup> Now 'Fields in Trust'

<sup>92</sup> Doc CD 102 para 10.68

<sup>93</sup> Doc CD 16 LP para 3.39; CD 23 para 3.19, 3.21

the Wildlife Trust, with the resulting additional benefits for nature conservation and biodiversity. Furthermore, there would be significantly increased usability of the open space within the reservoir embankments – including the linear park, walkways, paths, ecological areas and pocket parks, as well as other formal and informal recreational areas and centres, all of which would be likely to be used by many more people on a regular basis to a significantly greater degree than the surface of the reservoir is, or is likely to be at any time in the future. As a consequence, it cannot be claimed that there would be harm: there would be change, but change for the better.

- (e) The access and nature conservation benefits would not stand alone. The proposed open space would mark a step change in the attractiveness of the area for residents and visitors alike. The presence of wardens, the availability of refreshments, the clean environment, the open areas for general play, the availability of public toilets, play areas, seating, lighting and cycle tracks would all markedly increase the propensity of people to use the space. Such matters have been shown to be desirable facilities by users of Cardiff's open spaces<sup>94</sup>. All such benefits would be achieved without significantly impinging upon the quality or the character of the existing public open space in the Nant Fawr meadows.

156. It follows that there would be no conflict with LP policy 7 or with SP policies B4 and C8.

Reason for refusal 2 – sailing:

157. This reason for refusal relies on the same development plan policies as the first reason for refusal. It amounts to four assertions:

- (a) that the existing proposed water area provides a wide range of sailing and sail training facilities;
- (b) that the proposed water area is of 'modest dimensions' and 'constrained nature';
- (c) that there would not be a full alternative replacement facility;
- (d) that there would be "a significant diminution in the long-term opportunities for sailing activity available to the population of Cardiff compared to the existing opportunities.

158. It is important to note that the Council did not originally object to the previous appeal scheme on the grounds of the effect that it would have on sailing. Its position was that, following discussions with the developer and based on officer advice including that of the Harbour Authority, subject to the completion of a section 106 Agreement, the effect on sailing was acceptable. Hence, there was no reason for refusal relating to sailing (other than one referring to the submission of a section 106 agreement), no recommendation from officers that there should have been such a reason for refusal, and no objection on sailing grounds appeared in the

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<sup>94</sup> Doc ID 20, appendix 6 page 11, para 3.7.

Council's previous statement of case. The objection at the previous Inquiry first appeared in the Council's planning witness' statement of evidence based, he explained, on the personal view he had formed having read some third party objections, in particular that of Mr Geraint Evans.

159. As a result of that background, there was little evidence put before that Inquiry as to the actual nature of Llanishen Sailing Centre's use of the reservoir, and as to the availability and suitability of Cardiff Bay for sail training by any of the parties.

160. However, with regard to the current application and Inquiry, the Harbour Authority officers produced evidence as to the usage of Llanishen Sailing Centre and Cardiff Bay. Whilst not complete, it was sufficient to demonstrate the flaws in the Council's case.

161. It should also be noted that the other significant change is that it is now known, unlike on the last occasion, that a statutory inspection of the reservoir has led to a requirement to drain it down. As a result, sailing is bound to be interrupted at Llanishen for a period of at least 3 years (and very possibly longer, depending on the length of time that the investigation period takes and the length of time that it takes to refill the reservoir). Sailing will therefore be relocated to Cardiff Bay in any event.

162. As a result, the Council's long-term intention to continue sailing at Llanishen must be uncertain. That uncertainty is compounded by the fact that the Council's planning permission for its proposed portacabin-based sailing centre is temporary only. This is compounded yet further because it is unclear whether the Council will enter into a new lease: the terms of the new lease following the Council's application under the Landlord and Tenant Act 1954 have yet to be determined. The rent to be fixed will be at a commercial market rate (suspended during the maintenance works). Whether that rate would be attractive to the Council remains to be seen. No doubt a commercial judgment would have to be made as to whether its proposed portacabin-based sailing centre would be attractive enough and generate sufficient revenue (in the face of competition from the superior alternative facilities at Cardiff Bay, as well as from the Council's own operations there) to justify its continued subsidy of over £50,000 per year. The Council has made no commitment to continue to fund its sail training facilities at Llanishen. The changes in circumstances caused by the imminent drain down, the need to relocate to Cardiff Bay in any event, and the rising costs associated with the new lease are obviously significant enough to warrant formal consideration of the issue by the Council at some future date. The likelihood of the Council taking up its lease has been dramatically affected.

163. Thus, minimal weight should be ascribed to the sailing objection, even when taken at its highest. The only certainty as to the future is that the reservoir would be drained down for a period of at least 3 years. It remains the case that there is no certainty as to the future of sailing at Llanishen.

164. Upon examination of the evidence now available, it is now clear that each of the four assertions contained in the reasons for refusal is either incorrect or overstated. These are now dealt with in turn.

*(a) Response to the Council's assertion: the existing water area provides a wide range of sailing and sail training facilities:-*

165. The starting point in the analysis of the existing sailing and sail training at Llanishen reservoir is to acknowledge that it has only ever been an introductory site. The Council's sailing witness<sup>95</sup> stated 'Lots of youngsters have started off there. Once the bug has bitten, they have gone off to yacht clubs around the area, usually at the sea side. It has been a great introductory site'.

166. Historically, that may have been so, but the witness' knowledge of the site was chiefly confined to his having taken his children to learn sailing there in the 1970s. He had not sailed there himself, and had not been there again since, except for one recent visit earlier this year before giving evidence. But the current usage of the site, and hence its value as an introductory site, has to be assessed against the actual usage of it now – against the background of the higher expectations of users in a competitive market for recreational activities, of the availability of vastly improved facilities elsewhere, and of the existence of a whole new sailing resource in the shape of Cardiff Bay in particular. No racing takes place at Llanishen – that occurs at Cardiff Bay and, as confirmed by the Council's harbour operational manager<sup>96</sup>, is preferred by sailors<sup>97</sup>.

167. The use of Llanishen Sailing Centre for sail training is now minimal, as the harbour's operational manager explicitly and frankly acknowledged in cross examination. The Council's system of recording "performance indicators" does not allow any precise knowledge of how many people are in fact using the Centre and makes no distinction between those returning on multi-day courses and those attending subsequent courses. As the Council's witness conceded, there are very few people taking advantage of the courses available at Llanishen. It was agreed that the description of the level of usage being "minimal" in relation to the Youth S1/2 category, the Youth S3/4 category, the Youth Advanced category, the After School Club category and the youth groups category, was appropriate. It was also agreed that all those categories combined (no more than 51 performance indicators per week even at the busiest time of summer) might be no more than 25 persons per week using the centre (each visiting twice on a two day course). However, many of those will be more frequent visitors – doing longer courses or taking more than one course. No guidance is offered by the schedule of advertised courses: they are cancelled when insufficient numbers of people sign up<sup>98</sup>.

168. Thus, although the precise number of people using the centre is impossible to discover, the maximum usage for sail-training (other than schools) in the months of June, July and August last year seems likely to have been around 15-20 people.

169. In addition, windsurfing training only occurred on a single week in the entire year, when there were only 8 performance indicators recorded. The Council's

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<sup>95</sup> Mr Hart

<sup>96</sup> Mr Howell

<sup>97</sup> Doc. CD 146 letter dated 22.5.07, first para on last page.

<sup>98</sup> Docs CD 137, 154 ,155

evidence<sup>99</sup> indicates that the windsurfing courses on offer were 2 day courses, suggesting that there were 4 people on a 2 day course that week. 6 windsurfing courses were cancelled. Yet as the appellant's witness<sup>100</sup> observed, windsurfing is the largest growth area in water-based recreation. He concluded: "What we are seeing is minimal use of that facility."<sup>101</sup> The Council's witness did not disagree.

170. The Council's operational manager provided no evidence to the effect that the number of people using the sailing centre recently had been artificially depressed by the fact of the termination of the lease and consequent County Court proceedings, nor by the impact of the fence surrounding the reservoir or any other matters caused by the Appellant. Rather, the picture is a clear and consistent one of the popularity of the increasingly attractive facilities of Cardiff Bay offering impressive and comfortable club houses and, in fact, cheaper and clearly better value sail training courses in a far better environment. The shift of sail training to Cardiff Bay can only be expected to increase, not only due to its increasing popularity, but also as a consequence of the forthcoming temporary drain down of the reservoir, further calling Llanishen Sailing Centre's future viability into question.

171. Nor can the failure of the sailing centre simply be overcome by sufficient marketing, as was suggested to the appellant's witness<sup>102</sup>. Now that Llanishen sailing centre is part of "Activity Cardiff", its marketing exposure is higher with the use of collateral marketing and large scale roadside advertising boards. There is no evidence that its use is increasing as a result.

172. Central to the sailing centre's lack of attractiveness is the fact that its facilities and environment fail to meet the rising expectations of users, to whom better and more comfortable facilities are available elsewhere in a competitive market for recreational activities. The appellant's specialist witness, who not only sails but is a sailing journalist and president of the Dinghy Sailing Association<sup>103</sup>, concluded: "*My overall feeling is that Llanishen is the sort of facility that 20 years ago would have been seen as perfectly acceptable. But sailing is in a competitive market with other recreational activities. That sort of facility is lamentable nowadays. It is vital for the future of the sport that it confronts what people demand in terms of facilities. In all sorts of respects it does not provide. It only suits a certain sort of person with a limited view of what sailing is and what sailing can be.... It has been presented somewhat misleadingly as an excellent training facility. It is not at all in terms of facilities.*" Whilst the staff may have been excellent, the facilities at Llanishen are not.

173. The Council's plan to replace the huts with portacabins would do nothing to improve the situation. The appellant's witness also concluded that "*If I was looking to learn to sail, I would be less inclined to go to portacabins rather than somewhere*

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<sup>99</sup> Doc. ID 10 appendix 1 'windsurfing section'

<sup>100</sup> Professor Stevens

<sup>101</sup> Stevens cross examination by RAG

<sup>102</sup> Questions put to Professor Stevens by RAG

<sup>103</sup> Mr Barnes

*with a nice clubhouse and showers. It is a competitive market and such facilities are readily available. ... Portacabins are not acceptable any longer”.*

174. By contrast, Llanishen’s successful competitors at Cardiff Bay and elsewhere have modern facilities within modern buildings, warmth, refreshments, places for other family members to relax and wait or to spectate while one member of the family is sailing, and alternative possibilities for recreation. Social events are also common and as much part of a modern sailing club. There is no evidence that the Bay is becoming too crowded for sailing events and training.

175. As for the sailing atmosphere, the appellant’s specialist witness explained that there is an intimidating approach to the water on the existing slipway at Llanishen, which is extremely narrow and steep, and accessible only after hauling the boat up – not the wide and gentle slipway on which people may be efficiently and comfortably trained to launch their boats. It is also quite unsuitable for use by disabled persons<sup>104</sup> (the Council’s “sailability” provision is offered exclusively at Cardiff Bay already). Once on the reservoir, sailors are faced not with shelving banks, but with intimidating steep, slippery rock walls. In the event of capsizing, it is essential to get the sailors out of the water quickly and before the boat is blown onto the embankment walls on the upwind shore. This places a heavy onus on the instructor and rescue boat, as it is clearly possible in a squall to find a number of students capsized at the same time. Some may find this challenging and exciting, it is accepted, but others would be intimidated and find it unacceptable.

176. The Council and RAG<sup>105</sup> pointed to the historic record of successful sailors who began sailing at Llanishen. But that reasoning is flawed. The argument suggests that:

- lots of youngsters have started off sailing at Llanishen
- some of them have gone on to compete in sail racing at national and international levels
- therefore, Llanishen reservoir is responsible for producing national and international level sailors.

177. However, the fact that some successful sportsmen started at Llanishen is reflective only of the fact that Llanishen was the place in the largest city in Wales where anybody living in the area and wishing to start in the sport, would have been likely to begin. It is not evidence that such success would not have been achieved had Llanishen reservoir not been available in its current form, or that Llanishen has unique properties which are not available elsewhere. As noted by a RAG witness<sup>106</sup> any potential international sailors would move from Llanishen to a much bigger centre for training to a higher level. Nor, more importantly, is it evidence that the facilities were attractive and of high quality.

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<sup>104</sup> Conceded by Mr Geraint Evans in cross examination

<sup>105</sup> Doc. ID 30 para 2.6

<sup>106</sup> Mr Geraint Evans in cross examination

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178. Thus, the Council's reason for refusal that "*The existing water area provides a wide range of sailing and sail training facilities*" is not one which properly describes the existing situation at Llanishen, other than at a wholly minimal level. It disguises the fact that the Sailing Centre is in long-term decline, and that the range of sailing and sail training facilities which it does provide are all provided elsewhere. It is against that background that the adequacy of the proposed watersports centre and lake should be assessed.

*(b) Response to the Council's assertion: the proposed water area is of 'modest dimensions' and 'constrained nature':-*

179. The Council's misplaced criticisms of the proposed watersports centre<sup>107</sup> were that:

- (i) the lake was not deep enough for sailing
- (ii) the edge treatments would interfere with sailing
- (iii) the available sailing "triangle legs" would be too short
- (iv) the area of the lake is too small, because it would allow for only one course at a time, and children would feel "challenged" as they would be confronted by other boats at close quarters, and would not have sufficient opportunity to right a capsized boat before an instructor intervened; and
- (v) the lake would be susceptible to "flukey" wind, when children who are beginning to sail need steady conditions.

180. The depth of the proposed lake has been demonstrated to be quite ample in depth. It would have a substantial area of 6m deep water, suitable for capsized training, even though few dinghies normally 'go fully turtle' in training<sup>108</sup>. That is the depth that was in fact put forward as being suitable by the Council.<sup>109</sup> It is common ground that it is not necessary for the whole lake to be 6m deep, and that the precise location of that area could be a matter of detailed design.<sup>110</sup> Dinghies used at Llanishen mostly comprise Optimists and Toppers: the mast height of which are 2.4m (8ft) and 3-4m (12ft) respectively. The 6m depth would be well in excess of those heights, and therefore also able to accommodate taller masts. It is also to be noted that Cosmeston Lake, used successfully for sail training for many years, varies in depth from 3-5m.<sup>111</sup>

181. The concern as to the lake's edge treatment stemmed from a misunderstanding of the proposal which has been designed to support the lake edge preventing erosion and to facilitate safe egress from the water. Marginal planting would not extend out into the water to any significant degree and would

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<sup>107</sup> Voiced by Mr Hart, yachtmaster ocean sailing instructor

<sup>108</sup> Mr Barnes evidence in chief

<sup>109</sup> Doc ID 20, appendix 8, point 1, 5<sup>th</sup> line

<sup>110</sup> Agreed by Mr Howell in cross examination

<sup>111</sup> Docs CD 230 bottom of page 1 & CD 231 & 246

be confined to the immediate interface. Along some sections, hard edges would be used with a narrow shallow water margin for public safety and sloping beach or gravel margins would be included to improve access and egress for those involved in water sports. The safe edges would typically be designed within a 2 metre margin along the lake shore and would not exclude the use of this area of water for those engaged in water sports<sup>112</sup>. The Council<sup>113</sup> accepted that the matter would be capable of being fully resolved as a matter of detailed design. In fact, the edges of the lake would be far safer and more conducive to beginner's sense of comfort than the existing sides, which are steep and slippery when wet: as the Council's witness<sup>114</sup> acknowledged.

182. The criticism as to the length of the sailing course's triangular legs was unrealistic. It was premised on an assertion that boats sailing around the course would be planing at 10 knots, and travelling on non-planing legs at 5 knots. On that basis, the Council's witness<sup>115</sup> estimated that boats would travel the long legs of the triangle in 60 seconds, and the short leg in 30 seconds. Even on that basis, however, the witness assessed such a course to be "reasonably useful" as a beginners' training facility.

183. But the dinghies using the watersports lake would not be travelling at 10 knots. To have assessed the "usefulness" of the lake on that basis is perverse. As the appellant's witness<sup>116</sup> indicated, the intended purpose of the lake would be for beginners, who would be learning to control a boat at low speeds, typically sailing round and round in groups of 6 or 12, shepherded by 1 or 2 instructors. His own dinghy travels at 5 knots: a reasonable speed for an Optimist would be 3 knots. Sailing at that speed, sailors would have at least a two minutes on each leg – "which is what you want", as he explained. "With a bigger sheet of water, you wouldn't go further: you would pick a corner and go round and round."

184. The criticism as to the area of the proposed lake was totally exaggerated. The only objective guidance as to the requirements for a sailing lake is that put forward by the Sports Council in its guidance notes for sailing.<sup>117</sup> Those requirements specify a minimum area for sail training as being 1 ha, and a "desirable minimum for recreation" as being 3 ha. The minimum for small craft racing is 2 ha. The proposed lake would be some 6ha, twice the size of the desirable minimum for recreation, and three times that for small craft racing. As to capacity, the guidance advises that more than 3.3, four metre long dinghies per hectare can produce unacceptably crowded conditions (that is more than 20 larger size dinghies on the proposed lake). It is accordingly unreasonable of the Council<sup>118</sup> to assert that no more than 8-9 toppers (about 3m in length) could comfortably be

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<sup>112</sup> Doc. ID 14a para 3, examples at CD 278

<sup>113</sup> Mr Howell

<sup>114</sup> Mr Hart

<sup>115</sup> Mr Hart

<sup>116</sup> Mr Barnes

<sup>117</sup> Doc. ID 20 Appendix 10, page 2

<sup>118</sup> Mr Hart

accommodated on the proposed lake, which would need less space each than the larger dinghies referred to in the Sports Council guidance.

185. Furthermore, the Council's view is at odds with the success of other sailing clubs who train on similar sized lakes or smaller.<sup>119</sup> Locally excellent facilities are available to the Penarth Yacht Club at Cosmeston Lake, which has been used for training for many years. Rather than its size being seen as a constraint, the reverse is true: it is seen as a positive virtue that it is "safe, enclosed and small", matters which make Cosmeston Lake "the ideal spot for youngsters to learn."<sup>120</sup> The Council's witness' contrary view was no more than a subjective assessment, which is not shared by others<sup>121</sup>.

186. In one further significant respect, the proposed Llanishen watersports lake would be at a significant advantage over Cosmeston which lacks a sailing centre on-site. The presence of an on-site centre would have obvious advantages, but especially in relation to the capacity of the lake itself. It means that a class of 40 school children could be split into two groups of 20 – with one group on the water while the other studied theory inside the centre (or practice on a sailing simulator), before they swapped.

187. As to the Council's witness' additional claim<sup>122</sup> that more space is required to allow capsized boats to be righted, the appellant's witness<sup>123</sup> put that into perspective: *"You are trying to teach someone to get the boat up. Very rapidly people get tired. They are done in after a couple of times trying. The dinghy doesn't drift downwind all that quickly. It didn't seem to me to be a strong point at all. No responsible instructor would leave someone in the water for longer. I could never see that happening"*.

188. As to the effect on wind, the Council and RAG offered nothing but non-expert speculation on this point. Even assuming that there would be a noticeable wind shadow effect, that would not create an unacceptable problem for sailing. As made clear by the appellant's witness in cross examination<sup>124</sup>, the lake would be large enough to have perfectly good wind at all stages. Instructors would know where areas of wind shadow were, and would be able to send pupils to those areas where the wind was "cleaner". Buildings could even be used as helpful shelter when the wind was strong. But even in those areas which were affected by wind shadow, the Council had greatly overstated the difficulty.

189. It is certainly true that a newcomer would have an issue knowing from which direction the wind was coming. With a clean wind, boats stop moving as their sails empty upon turning. With a 'flukey' wind, the wind can change direction, but that is a lesson that should and needs to be learnt by beginners.

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<sup>119</sup> Docs CD 210-212

<sup>120</sup> Doc CD 272

<sup>121</sup> Mr Barnes

<sup>122</sup> Mr Hart

<sup>123</sup> Mr Barnes

<sup>124</sup> Mr Barnes

190. A helpful comparison is the position that which pertains in Bristol Harbour (a site located in a valley and bordered by the terraces of Clifton, with four storey buildings and high dock walls at the water's edge), an "extreme example", but one where nonetheless people choose to sail.<sup>125</sup>

191. Taking all these matters into account, it is plain that the proposed watersports lake would be suitable for sail training. It is not so constrained, or of such a scale, as to inhibit its use for that purpose: the reverse would be true. It would be of an ideal size and depth, and be a far more accessible and less intimidating lake upon which to learn to sail than the existing reservoir. Comparison with other similarly sized (or more restricted) areas of water revealed that there would be no impediment at all to the use of the new lake by people across Cardiff, whether or not in combination with Cardiff Bay, and whether by school children, racers, learners, or those conducting immersion training.

*(c) Response to the Council's assertion: there would not be 'a full alternative replacement facility':-*

192. This assertion is groundless in view of the evidence now available as to the ability to make provision at Cardiff Bay. The existing provision at Cardiff Bay is already excellent. Cardiff Bay Yacht Club was described as "the Jewel in the Crown; a great club; they do a great deal with children; they teach juniors and cadets."<sup>126</sup> "Cardiff Bay gives everything you could possibly want."<sup>127</sup> The Council's harbour operational manager stated that the Bay is "a tremendous resource for Cardiff and the region. There is a 200ha lake, with a lot of sailing and other activities." It has plenty of capacity with only 1500 of the 2000 resident moorings taken to date. That is not a measure of capacity for dinghies, which are not required to be moored.

193. The Council's operational manager confirmed that the Council would establish a new sailing centre at Cardiff Bay in the event of the development proceeding. It would be feasible to find a suitable site at the Bay for a Council run facility, in addition to that which it already has at Channel View. On the balance of probabilities, such a facility would be established.<sup>128</sup> The Council would also relocate to Cardiff Bay in the event of temporary disruption to Llanishen Sailing Centre because of the forthcoming drain down.

194. Furthermore, sail-training courses available at Cardiff Bay which are already available from private sector operators in Cardiff Bay are in fact cheaper, a fact that came as some surprise to both the Council's witnesses and objectors. Thus, as the Council's witness<sup>129</sup> accepted, it is not as if the position is that Llanishen Sailing Centre, by virtue of being local authority run, offers good value for money.<sup>130</sup>

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<sup>125</sup> See Doc CD211.

<sup>126</sup> Mr Hart

<sup>127</sup> Mr Barnes

<sup>128</sup> Mr Howell

<sup>129</sup> Mr Hart

<sup>130</sup> See Doc CD 204 pages 14, 16-18 and Doc ID 20 Appendix 4, page 5.

195. As to the Council's own existing operations at Cardiff Bay, it is already used for special events, club use, powerboats, and "sailability", as well as some of the adult sail training. All the activities advertised by the Council as being available at Llanishen are equally advertised as being available at Cardiff Bay. Windsurfing takes place at Cardiff Bay, substantially more often than at Llanishen: it was confirmed that 8 uses were recorded on one single day only<sup>131</sup>. Canoeing also takes place in significant amounts at Cardiff Bay. After-school sailing and multi-activity (including problem solving) takes place at both Llanishen and Cardiff Bay. Instructors are also already being trained at Cardiff Bay, and despite contrary views expressed by RAG's witness<sup>132</sup>, could in the view of the appellant's specialist witness<sup>133</sup>, continue to be, if necessary in-combination with the new lake at Llanishen.

196. In short, it is possible to run all the available courses at Cardiff Bay with one possible exception: deliberate capsizing activities would not take place at Cardiff Bay. Third parties raised concern about the water quality of the Bay which is acknowledged to be unsuitable for 20% of the year for immersion events<sup>134</sup>. However, there is no reason why that activity could not take place at the future watersports centre at Llanishen. It was also confirmed that all activities, other than deliberate capsizing, would be able to take place at Cardiff Bay<sup>135</sup>.

197. The Council placed emphasis on the use of the existing Llanishen Sailing Centre by schools. Indeed, 1050 of the 2800 recorded uses are attributable to this use<sup>136</sup>. These are, insofar as they involve sailing, rather than problem solving or other activities, "taster" sessions of sailing for which children are charged £6.50 for each primary school child and £7.50 for each secondary school child.<sup>137</sup> But as to those activities, there is no reason why they could not be provided at the new watersports centre in future. Furthermore, the Council also offers such provision to schools at Cardiff Bay Water Activity Centre. That facility would also remain available to the Council. On the occasions when sailing activities had to be cancelled at Cardiff Bay, because of poor water quality, it was confirmed that other activities are available there. Alternatively, sailing could be relocated to Llanishen. The highest this point goes is that fewer schools' places would be offered at Llanishen in any one session, but that does not point to any reduction of schools' places at Llanishen overall: just the need to timetable the sessions differently. In short, no difficulties arise which cannot be met by effective management.

198. The other choices available to those seeking sail training are in fact rich, and also competitively priced. Amongst them are the following:

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<sup>131</sup> Mr Howell in cross examination

<sup>132</sup> Mr Geraint Evans

<sup>133</sup> Mr Barnes

<sup>134</sup> CD 146 confirmed by Harbour operational manager to still be correct

<sup>135</sup> Mr Howell

<sup>136</sup> Doc ID 10 appendix 2 page 2

<sup>137</sup> Mr Howell

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- (i) Penarth Yacht Club was described by the harbour operational manager as being close to Cardiff and the Council's sailing witness as "a long-standing, very, very well run club. It has the finest club house in South Wales. They use Cosmeston Lake for introducing youngsters. They go up there once a week and on an evening in the summer."
- (ii) Other lakes were recommended by the Council's sailing witness included the Llandegfedd Sailing Club which was described as "a really good place", albeit that water levels sometimes prevented sailing. The harbour operational manager described it as a "fantastic facility" in a "very pleasant area", which has planning permission for a new clubhouse and 100ha of the 170ha lake available for sailing. Corus Sailing Club was described as having the "best lake" (Eglwys Nunydd). Indeed, it is noted as being the strongest dinghy racing club in the region, whose lake is used all year round (and has been since 1963), and free courses are provided to members including children throughout the summer. In addition the Merthyr Tydfil Sailing Club offers sailing in the attractive landscape of the Brecon Beacons National Park.
- (iii) Several clubs which use tidal waters for sail training were also commended by the Council's sailing witness: Mumbles Yacht Club was described as "a wonderful site, a lovely club". He commented that children are very well looked after, albeit the sea-going conditions could be challenging. Barry Yacht Club has a dinghy sailing centre and had "very good facilities". It was trying to encourage sea cadets. Neath Sea Cadet Sailing Centre also encouraged sea cadets.

199. Some clubs were described by the Council's sailing witness as "hugely successful", while others were in decline – "partly because of Cardiff Bay. The facilities in Cardiff Bay are considered excellent" where "the sheltered water is a huge attraction for yachtsmen." The sailing is "very good", and every discipline of boating was represented there (including windsurfing, kayaking, cruising, power boats, as well as dinghy sailing). As a result many had moved from the club at Barry.

200. Yet even a beginner who starts sailing at Llanishen would inevitably gravitate to a club in order to continue sailing. It was common ground that clubs are the lifeblood of any sport and that short courses provided at centres such as Llanishen do not provide a pathway for progression in the sport. Club membership is essential for recreational and competitive sailing.<sup>138</sup>

201. Sailing clubs are not exclusive organisations in the manner in which some golf clubs can be. They are characterised by their informal atmosphere, which does not intimidate visitors.<sup>139</sup> There is a solid practical reason why courses are offered to club members, namely the need to provide insurance. Even on that membership basis, clubs undercut Llanishen in terms of the costs of taking a sail training course.

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<sup>138</sup> Doc ID 20 appendix 4, pp12-13

<sup>139</sup> Mr Barnes conceded in cross examination

202. Finally under this heading, it is appropriate to deal with the fear expressed by one interested person that sailing on Cardiff Bay represents an unacceptable hazard to health. That fear is without foundation; it is based only upon a high level of risk aversion on his part, which is not shared either by the Council itself or by the many users of Cardiff Bay. The reality is that a substantial number of people sail dinghies in Cardiff Bay. Indeed, dinghy racing occurs there, which inevitably means that some will capsize. They choose to do that despite the existence of the Harbour Authority's disclaimer<sup>140</sup> (upon which Mr Evans relied as evidence of a risk). Those warnings are legally required, but their existence does not mean – and is not understood by most users to mean – that sailing is unsafe. The appellant's witness<sup>141</sup> stated that *"People are perfectly happy. It has never arisen as an issue in my experience. You don't tend to ingest water when you capsize. You very rarely submerge your head: capsize is a gentle experience – you slowly tip in. The risk is extraordinarily low as compared to crossing the road. The danger is drowning. The water quality one is very low. Sailors do not spend time worrying about it. However, a training establishment would, as part of its risk assessment give advice. So they would say that it will not do capsize training on those (20% of the time) days, but carry on sailing."* Comparison was drawn to Bristol harbour which is not suitable for swimming but where sailing courses are offered [Doc. CD 211].

203. Nor is the claim that the water is not safe for sailing supported by the data obtained from the Council's sophisticated system of water monitoring<sup>142</sup>. Particular attention is drawn to CD 160 Volume 9D in which:

- (i) At tab 1, page 5: Channel View appears in the water quality monitoring locations between 3 and 5.
- (ii) At tab 6, it is apparent that the Council takes a precautionary approach (see the last paragraph of the first page) and that best practice is agreed with the sports governing bodies (see the last paragraph of the document).
- (iii) At tab 10 see the latest Bacteriology Review showing 90% compliance with faecal indicators. See also table 1 showing the bathing water compliance figures for Channel View (noting that bathing quality water is not required for sailing, as it is not considered to be an immersion sport).

204. There are accordingly no grounds upon which to come to the conclusion that the Bay is not safe for sailing. Such a view is based only on a highly subjective view of the risk: there is no independent evidence or expertise suggesting that the Council and the RYA were wrong to consider that the Bay was fully suited to sailing.<sup>143</sup> There is no evidence either that significant numbers of people are put off from sailing in the Bay. Indeed, the evidence is the reverse, as the harbour's

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<sup>140</sup> Mr Geraint Evans with reference to CD 212

<sup>141</sup> Mr Barnes

<sup>142</sup> As demonstrated by Doc CD 142, third para: continuous monitoring buoys combined with spot samples and data in CD 160 files 9A-9D.

<sup>143</sup> Doc CD.146

operational manager explained, after taking the introductory courses, many adults preferred to continue their training on the Bay in preference to sailing at Llanishen.

205. It is the case that the quality of water at Llanishen is good, but that would be the case with the new lake too.<sup>144</sup> It is only with respect to capsized training by beginners in particular, that this is seen to be a requirement by the objectors and the Council witnesses. However, the new lake at Llanishen would be available for such training and be wholly suitable for such purpose. In any event, the Council does not consider that sailing as an immersion sport<sup>145</sup> and beginners learn at Cardiff Bay today already. Thus this point of objection has no weight.

*(d) Response to the Council's assertion: "The development would therefore "result in a significant diminution in the long-term opportunities for sailing activity available to the population of Cardiff compared to the existing opportunities":-*

206. Far from there being a diminution in long term opportunities for sailing activity available to the population of Cardiff, the net effect of the proposals would be to increase them. There would be an ideal facility for those wishing to learn sailing and other watersports in an attractive and well equipped safe environment. The new watersports centre would provide a properly equipped centre, a bar, facilities for non-sailing members of the family, and an attractive water body – all of which are normal by modern sailing school standards, which would encourage and attract people to participate in watersports. None of these are available at Llanishen at present.<sup>146</sup> Beyond that, the additional attractions of the multi-sports choice, the sail training simulator, and the wildlife centre all combine to enhance the attractiveness of the centre for families, providing other activities and choices for other parents and siblings alike.

207. Further, by reason of the significant contributions provided by the section 106 Unilateral Undertaking, enhanced opportunities would be available to sail at Cardiff Bay at all levels. Some £220,000 would be provided for the development of sailing opportunities at Cardiff Bay, which might be used by the Council towards providing a well located sailing centre on the Bay with appropriate slipways and pontoons. The mere fact, therefore, that intermediate and advanced courses would be moved from Llanishen to Cardiff Bay is not in itself of any significance. It would not affect the range of courses available to the population of Cardiff. Instead, there would be an opportunity for the range of courses to be considerably enhanced. Nor would it mean that there would no longer be the opportunity for less experienced sailors to learn in the company of experienced and senior sailors, as the Council suggested: that opportunity would continue (and would be enhanced) at Cardiff Bay.

208. The use of Llanishen for beginners' courses and specific capsized training, as well as for other watersports, would make best use of the facility, and best fulfil the Council's own role in promoting sport. Such an arrangement would maximise the attractiveness of sailing to newcomers, and provide a natural progression to Cardiff

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<sup>144</sup> See Doc ID 21 'conclusion' - nothing put to him in cross examination altered that assessment.

<sup>145</sup> Doc. CD 146 letter dated 22.5.07 para 6

<sup>146</sup> Mr Barnes evidence in chief

Bay in the longer term.<sup>147</sup> It would appeal to more people, not just those who are interested in racing.<sup>148</sup>

209. The attractiveness of a watersports facility should be gauged not only by reference to the water body itself, but by reference to the quality of the experience as a whole. The quality of the experience provided by the existing facility is poor. While a minority of committed sailors<sup>149</sup> may find it suitable to their purposes, this is not the relevant test. As the appellant's witness<sup>150</sup> emphasised, sailing and other watersports must compete against other recreational opportunities: "Imagine a sedentary resident of South Wales, he will look at his local sports centre, with a 5 a side pitch etc, modern facilities, a café etc, or he will go to Llanishen and see three wooden huts. It is almost as if he is encouraged not to do sailing if that is the choice. ... Llanishen is rather like a youth hostel of 30 years ago – which was fine, everyone was happy with that. But now the YHA are updating their facilities. You can't argue for what you yourself prefer – you have to respond to demand. ... Llanishen is so narrow in its appeal, I can't see it competing at all with other facilities"<sup>151</sup>.

210. It is abundantly plain that the basis of the Council's case, namely that the existing Llanishen Sailing Centre uniquely "ticks all the boxes" was wholly misconceived and outdated. It ignored the most glaring failures of the existing sailing centre – the "boxes" it comprehensively fails to "tick". It lacks: a modern clubhouse with modern inclusive facilities, a welcoming facility for non-sailing family members, the opportunity to change, shower, and buy refreshments in a comfortable environment, an acceptable jetty and pontoon, and safe shelving banks at the water's edge.

### *Conclusions of sailing*

211. The existing facility is substandard, enjoys minimal usage and is in decline. Its future at Llanishen is in any event uncertain given the significant disruption to it to be caused by the temporary drain down, and the as yet unresolved question as to a new lease at a higher (and yet to be fixed) rent. Far from harm being caused, this development would provide significant benefits for the long-term sailing opportunities for the people of Cardiff, securing its future, helping to create an attractive and enjoyable entry to sailing designed to appeal not just to would-be racers, but to the majority of people who prefer to participate in sailing at a purely recreational level, and creating an opportunity greatly to enhance the Council's

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<sup>147</sup> Mr Barnes : "The best role for Llanishen is at the early stage, and to make it attractive for sailors – to attract the vast majority [who are interested in recreational sailing], and still attract the racers as well, as they will move on. The whole point as a Council is to attract people." ... "The proposal makes Llanishen attractive for early stages and learning to sail. I think it is correct and perceptive to say that the obvious place for later stages is Cardiff Bay. National if not international profile, if there is investment in facilities."

<sup>148</sup> Mr Barnes cross examination, when asked about the "club atmosphere" of the existing sailing centre referred to by Mr Geraint Evans: "You are asking me to speculate about the reason why people like Mr Evans are defending the club. I speculate that they are people who like racing and solely racing, and are not interested in the other things which development will provide. ... The changed lake will appeal to more people."

<sup>149</sup> Mr G Evans

<sup>150</sup> Prof Stevens and Mr Barnes

<sup>151</sup> Mr Barnes

facilities at Cardiff Bay, a world class sailing venue. Llanishen would continue as a sail training location for beginners with good quality water, with high quality facilities in a significantly enhanced and attractive environment. With the benefit of the evidence now available, the Council's reason for refusal should be seen to be entirely without foundation.

### Reason for refusal 3 - Ecology

212. Despite the proposal having been progressed in the light of expert ecology advice from leading professionals in the field,<sup>152</sup> the Council's reason for refusal is based upon alleged "unacceptable harm" to the Llanishen Reservoir SINC, which is said not to be outweighed by the potential ecological benefits of the scheme, contrary to SP policy C4 (and policy 2.47 of the deposit draft UDP). Two observations may immediately be made. Firstly, the SP policy C4 provides that "enhancement" of SINCs will be favoured – a notably different form of words to LP policy 8, which is the policy that provides that permission would not be granted for development that would cause unacceptable harm. It is common ground, however, that LP policy 8 does not apply to SINCs.

213. Secondly, that the Council must now revisit its reason for refusal in light of the fact that Llanishen reservoir must be drained down in the short-term future in any event. The harm which would be caused as a result of that maintenance work cannot be considered to weigh against the proposal.

214. Once those two factors are borne in mind, this reason for refusal falls away in its entirety, given that there would be significant and accepted ecological benefits arising from the development. These would enhance not only Llanishen reservoir following its draining down, but also the neighbouring SSSIs and other SINCs. There is the real likelihood, within a short time, to satisfy the criteria for the (re)designation of the new lake as a SINC<sup>153</sup> with positive conditions being created for important habitats (woodlands, reedbeds) and species (birds, reptiles, vascular plants), all of County importance<sup>154</sup>. Moreover, there is no reason to suppose that the new lake would not attract birds such as water rail, reed warblers, reed buntings and sedge warblers, again regarded as important for bio-diversity. Indeed, the proposal's likely ecological benefits are such as to lend substantial weight in favour of granting planning permission.

215. As found at other sites such as Cosmeston which has over 300,000 visitors annually, the presence of people in a managed way need not result in harm to the ecological interests. Moreover, the proposed £4m for the management of the wetland and education centre, the reedbeds, the grasslands SINC and the embankments SSSI and other areas within and adjoining the development, would ensure significant ecological benefits.

216. Thus even were there to be doubt as to the need for the temporary drain down, there would be no unacceptable harm to the Llanishen Reservoir SINC, and the benefits would considerably outweigh any such harm as did arise. This should

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<sup>152</sup> Doc ID 16 paras 4.2.1-5

<sup>153</sup> Doc CD 21 Page 41cf

<sup>154</sup> Ditto page 30cf

be weighed with the current situation in which the ecological interest of the site is being degraded, exacerbated by the documented evidence of damage and trespass, often 'after hours' such as by fires, trampling, dog walking and otherwise. This results in damage to the Embankments SSSI, disturbance to the Lisvane SSSI, and a succession in the Grasslands SINC.

*The effect on the Llanishen Reservoir SINC*

217. The Council officers' position (as contained in their report, written without knowledge of the drain down requirement) is that the effect on Llanishen Reservoir SINC was the only potential area of concern left: the potential impact on all other SINC's and the SSSI could be dealt with by condition.<sup>155 156</sup>

218. Even ignoring the effects that drain down would have in any event, the effect on the SINC's 3 types of pondweed and stonewort interest would not be unacceptably harmful. Even adopting a precautionary approach, there is no reasonable likelihood that the SINC's water quality would deteriorate to such an extent that it would no longer support pondweed and stonewort interest<sup>157</sup>. The Council's ecology witness<sup>158</sup> was concerned that extreme events might overwhelm a SUDS system designed to preserve the water quality. However, that concern (which was not based on any calculations as to the rainfall or with reference to any particular design) was comprehensively rebutted by the appellant's specialist<sup>159</sup>. The provision of a 'first flush system' to intercept the initial runoff from the catchment after passage through sediment/oil interceptor devices would avoid such events<sup>160</sup>. Swales around the lake would provide additional security in extreme event situations.

219. As to the concern that residents' activities might affect the water quality, that was acknowledged to be a matter of good management. Given that the management would on this occasion be provided by the Wildlife Trust, whose wardens would be concerned to protect the water quality of the lake for its interest, there is every reason to believe that such management would be provided.

220. Even if there were to be some degradation in water quality, the pondweed and stonewort would be likely to survive: their survival is not pinned to the existing water quality status of Llanishen. While they would not survive in extremely eutrophic (high nutrient status) water, they have a fairly broad ecological tolerance, with the result that it was concluded that it was a "spurious" point to claim that the existing water quality of Llanishen was required to be retained.<sup>161</sup>

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<sup>155</sup> Doc CD 99, para 5.3.1

<sup>156</sup> Doc ID 21 - Swanson p/e section 5 confirmed by Mr D Woodfield

<sup>157</sup> Mr Woodfield

<sup>158</sup> Dr Latimer

<sup>159</sup> Mr Swanson

<sup>160</sup> Doc ID 21 paras 3.3.4 & 4.2.5

<sup>161</sup> Mr Woodfield

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221. As to the pondweed, the BSBI Handbook<sup>162</sup> describes the species as one of "wide ecological tolerance" and of wide distribution. The lakes in which it grows range from oligotrophic (nutrient poor) water to eutrophic water (such as Bromley Marsh). Its distribution across the UK does not correlate to the distribution of lakes of lowest trophic status: a significant number are found in the eutrophic waters of the south-east.

222. With regard to stonewort, the BSBI Handbook<sup>163</sup> describes a similar situation both as to where it grows and as to its tolerance. It also is widespread, and not restricted to oligotrophic water (otherwise its distribution would be biased to the west and north of the country), and is found in the London basin, demonstrating broad ecological tolerance.

223. Both species have survived in water which (despite Dr Latimer's claims in Doc CCC9) is best classed as being at the bottom end of eutrophic,<sup>164</sup> and apparently survived such conditions as a high phosphorus event in 2002.

224. Therefore in a 'no-drain down world', mitigation measures could be put into place to preserve the species during construction works (by the use of interlocking sheet piles as explained by the appellant's specialist<sup>165</sup> Mr Woodfield, going beyond those measures referred to in the ES). There is more than a reasonable likelihood that the species would then survive post-development, therefore, even if there were to be some degradation in the water quality.

225. Notwithstanding this however, even if there were to be a total loss of both species as a result of the development (as opposed to as a result of the temporary drain down), that harm would still not be "unacceptable" when assessed in accordance with the guidance in the Council's SPG on Biodiversity. This provides that with mitigation and compensation, the prospect of such loss would not create an impediment to the grant of planning permission.<sup>166</sup> As to mitigation, there would be a SUDS design and translocation proposals implemented. As to compensation, each of the four acceptable means of compensation would be delivered by this development.

226. Firstly, 'habitat recreation': Llanishen lake is currently an area of open water. That would be re-created, albeit smaller, but including areas of adequate depth for the species concerned. Secondly, 'habitat creation': there is currently no reedbeds on site. The creation of reedbed as part of the proposed development has always been accepted to be a significant benefit. Thirdly, 'habitat enhancement': mechanisms would be put in place to arrest and reverse degradation of the surrounding SINC's and the SSSI, as well as enhancement of the lake edges in particular adjacent to the proposed reedbed. Fourthly, 'social community and enhancement': the provision of significantly improved access, interpretative aids,

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<sup>162</sup> Extract at Doc CD 291, 2<sup>nd</sup> page, 2<sup>nd</sup> para

<sup>163</sup> Extract at Doc CD 292

<sup>164</sup> Mr Woodfield

<sup>165</sup> Mr Woodfield

<sup>166</sup> Docs CD 20 and 21

and the wildlife centre offers a rare opportunity to engage with the local population to appreciate the wildlife resource on its doorstep.

227. In terms of providing both mitigation and compensation, there have been extensive consultations with both CCW and the Council over a number of years. The package of measures proposed is the product of that full consultative process. The ES has been acknowledged by all to be acceptable. This provides details of the extent of protected species and together with detailed evidence to the Inquiry<sup>167</sup> indicates that the European Protected species using the site are restricted to otters and bats. The latter forage over a wide area and the former intermittently use the Nant Fawr stream in transit, but there is no evidence of sustained usage. The package of conditions agreed with CCW would include mitigation and wildlife protection measures, both in relation to the protected species and generally. This would ensure that the proposal would not offend the tests applicable to the grant of licences needed to enable the implementation of planning permissions likely to affect European protected species.

228. Moreover, as to the rarity of the species, no species found in the existing reservoir is rare either nationally or regionally or even locally in "wider Cardiff" which would include its environs in Glamorgan. Pondweed (*Potamogeton perfoliatus*) is "a widespread species"<sup>168</sup> in the UK. Similarly Stonewort (*Nitella flexilis*) is "common and widespread throughout Britain and Europe".<sup>169</sup> Each is also probably under-recorded, being an aquatic species (it cannot be inferred that where it is not recorded on the distribution map, it is not found.) But it is known that each is commonly found in Glamorgan, if not Cardiff.<sup>170</sup> Indeed, outside Cardiff, neither pondweed nor stonewort is known to have been considered important enough to justify transfer (because they are widespread and relatively common).<sup>171</sup> The mere fact that the two species together form an "assemblage" does not do anything to change that assessment. The compensation would more than outweigh the loss of those species at this location – even assuming the unlikely event that (a) loss was caused in any event by drain down; and that (b) the pondweed and stonewort could not be successfully translocated and maintained following development.

229. Similarly, the effect on toads would not be unacceptable. Assuming that the toad interest is affected by the temporary drain down, the development would provide both mitigation and compensation in respect of any residual impact on toads at Llanishen which cannot be required or guaranteed on maintenance associated drain down.<sup>172</sup> During construction, translocation and exclusion, phased with the appropriate time of year, would minimise the impact on toads. Moreover, the creation of both the new wetlands and the new lake would provide suitable

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<sup>167</sup> ID 16 paras 3.2.6-10

<sup>168</sup> Doc CD 291

<sup>169</sup> Doc CD 292

<sup>170</sup> Dr Latimer in cross examination

<sup>171</sup> Mr Woodfield in cross examination

<sup>172</sup> Doc CD 21, p.24, para 2.5.2

habitats for common toads, and the linear park would provide an extension of the available land-based habitat. Reedbeds, in particular, provide excellent habitats. Links between habitats would be maintained, including terrestrial areas, and there would be clear interfaces where toads leaving or returning to the water would not have to cross residential development. Therefore each element of compensation measures (*Habitat creation, recreation, enhancement and social community and enhancement*), would be engaged.

230. Furthermore, even if there were to be any harm to any of the identified interests of the Llanishen reservoir, set against that must be the “very high likelihood”<sup>173</sup> of SINC status being regained in the new lake area within a short space of time, given that it is likely to meet the applicable standards in respect of:

- (i) Birds (sedge warblers, reed buntings and reed warblers are a “near certainty” to colonise and breed in the newly created reedbed, there is a high likelihood of Cetti’s warblers doing so too, and a “pretty high likelihood” of water rail);
- (ii) Reedbeds and standing open water (in the event of a decline in eutrophic status);
- (iii) Reptiles and vascular plants may also be of extended interest.

231. Despite this, the Council gave no credit for this likelihood in their analysis of the balance of benefits to the detriment to nature conservation interests.

232. Finally, it is to be noted that Llanishen Reservoir SINC was formerly designated in part for its over-wintering bird interest; that interest has now been removed from the SINC’s citation. The new lake, however, would be more suitable for use because of its more suitable depth: a greater proportion would be available to diving ducks, and shallower margins would be productive for those species.

233. Taken together, there is no basis to conclude that there would be unacceptable harm to the Llanishen Reservoir SINC by reason of the proposed development. What limited harm might hypothetically arise is mitigated and compensated for in compliance with the Council’s SPG on Biodiversity. Overall, there would be benefit.

#### *Wider benefits to nature conservation and biodiversity*

234. To be added to the planning balance are the considerable benefits to nature conservation and biodiversity, each of which gain greater weight when compared with the “do nothing” situation. They may be summarised as follows:

#### *Lisvane SSSI*

235. This SSSI is currently in unfavourable condition<sup>174</sup>. The Council’s ecologist<sup>175</sup> agreed that it was a CCW and national priority to move Lisvane to a more

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<sup>173</sup> Dr Latimer accepted in cross examination that it was more likely than not

<sup>174</sup> Doc ID16 paragraph 4.1.2-3

<sup>175</sup> Dr Latimer

favourable condition, or to review its continued status as a SSSI. CCW's stated objective is to sustain the continued interest, however, by providing management and maintenance to enhance it. Its management prescription for the SSSI's over-wintering waterfowl interest is set out in the agreed S.39 management plan at paragraph 5.1.1,<sup>176</sup> namely to "reduce disturbance to waterfowl by reducing impacts of human activity" in respect of walking (and fishing), including (amongst other means) by the introduction of wardening, landscaping/planting, and the waymarking of paths.

236. In the absence of the proposals, there is no prospect of favourable condition being achieved. Dog walking and other disturbance would continue, to the detriment of the SSSI. Under the proposals, the provision of a cohesive access strategy and wardening, and most importantly the provision of alternative areas for recreational use, cumulatively offer the real opportunity to reduce disturbance to over-wintering birds. Therefore whilst trespass and damage occur now despite regular security surveillance, through proactive management measures that would respond to demand and which could include features such as 'green gyms' to engage with local children, greater security for the ecological interests could be achieved.

237. The provision of controlled access was accepted by the Council's witness to be a "very important aspect" of the design of the scheme and would ensure that the introduction of housing would not create a difficulty in that respect. Indeed, other SSSIs have been managed successfully in urban areas (such as the Barnes Wetlands Centre in London, and the Leybourne Lakes Country Park in Kent)<sup>177</sup>. Cosmeston Lakes attract up to 300,000 visitors per year, with visitors likely to walk around the two principal lakes on the western side of which is a SSSI. It is successfully managed through the combination of wardening and by simple and discrete post and wire fencing, together with notices and planting.<sup>178</sup> There is no reason why a similar model should not be successful at the Lisvane SSSI.

238. The Council's ecologist witness conceded that there was a likelihood that, even if the main access to the site were to be to Lisvane Road, a significant reduction on the disturbance to Lisvane Reservoir SSSI by persons and dogs could be achieved. Also, that there was no evidence of any other way of achieving that, given the resources required for wardening and construction, the tension with the use of the sailing centre at its existing location (referred to in the management plan itself). It was agreed accordingly, that there would be benefits to the SSSI in the event of the development proceeding. Such matters had not been weighed in the balance by the Council.

#### *Embankments SSSI*

239. The same is true of the Embankments SSSI: benefit would accrue by the provision of additional management through wardening, access control and the provision of alternative locations for recreation. Combined with the expert

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<sup>176</sup> Doc ID16 Appendix CG2

<sup>177</sup> Mr Woodfield evidence in chief

<sup>178</sup> See Docs CD230, 231 and 294

management of the Wildlife Trust, there would be significant benefit to the Embankments SSSI compared to the “do nothing” fall-back situation in the event of planning permission being refused. As the Council’s ecologist accepted, trampling and dog walking on the SSSI would have a negative effect on the quality of the SSSI. He also agreed that the only way to prevent that would be by the erection of fences, maintaining them and by wardening, all at substantial cost. Even if the area were to be managed by volunteers (an unrealistic prospect), the Council’s ecologist agreed that that would not prevent trespass, bonfires, litter, dog walking and trampling. Exclusion of those activities by the development, combined with wardening, would be of benefit.

240. No weight should be placed upon the “unquantified and unquantifiable risk” to the Embankments SSSI referred to by the Council. There is no evidence that change in hydrology or NOx would adversely affect the mycological interest of the SSSI. The CCW (who have been advised throughout by their own specialist mycologist<sup>179</sup>), have no evidence to support that fear and make no objection on that ground themselves.<sup>180</sup> On the contrary they take the view that there is no risk of harm, subject to appropriate conditions being implemented.

#### *Grasslands SINC*

241. The grassland SINC is “likely to benefit substantially” by virtue of the management of the Wildlife Trust: it is currently rapidly progressing through habitat succession to scrub, with an over-dominance of bramble.<sup>181</sup> The Council’s ecologist acknowledged that management would be required and that the proposal would bring about a significant benefit in this regard. The Wildlife Trust was a body which he also acknowledged to be appropriate to manage both this area and the SSSIs.

242. It was wholly unrealistic of the Council and RAG to suggest that those undoubted benefits could be achieved if the landowner simply allowed volunteers, such as the Friends of Nant Fawr, to manage the land. That suggestion was wholly at odds with how the Friends themselves are permitted to operate on the Council’s own land. The machinery used is provided by the Council and the work parties are supervised by the Council’s park rangers. That is hardly surprising: the Friends could not possibly be expected to provide their own heavy equipment and liability for accidents would rest with the Council if there was a failure on its part properly to supervise the volunteers’ activities.

243. Secondly, the same problems would arise on the Grasslands SINC (with the additional hazard of the presence of the adjoining reservoir). The management of the land would require resources, both in terms of staff and of equipment – even if some or all of the manual labour were to be provided by volunteers. Any risk assessment of the use of potentially dangerous equipment would require that supervision be provided (as it is on the Council’s land). There is no evidence of funding or resources being provided absent the development – least of all in

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<sup>179</sup> Dr Ray Woods

<sup>180</sup> Doc 16a rebuttal proof at paras 2.4.12-2.4.14, and 2.4.20-2.4.24

<sup>181</sup> Mr Woodfield, Doc ID 16 para 3.4.9

perpetuity; nor can it simply be asserted by the Council that “any responsible landowner” would willingly provide such resources in circumstances where it is under no obligation to do so. Moreover, the Council have not indicated that they would supervise the activities of the Nant Fawr Friends on third party land, or provide them with powered machinery for use on third party land, or that they would accept liability for supervision by others, or that such supervision is not necessary. Nor is there any evidence that any other body would take on the associated liabilities, supervision responsibilities, or costs. Nor has there been any proposal.

#### *Reedbed BAP*

244. Reedbed is a rare habitat in Wales and in the UK. In Glamorgan there are few (such as the 0.8ha of reedbed at Cosmeston)<sup>182</sup>. Cardiff’s areas are very small<sup>183</sup>. The provision of 1.76ha of reedbed provides not only the 0.25ha expansion that is sought by the Local Biodiversity Action Plan 2008 to be achieved by 2015, but considerably more besides, which will go towards meeting the Welsh expansion target of 25ha. The provision of reedbed on this scale could be considered to be of national significance not only in Wales but also the UK.<sup>184</sup>

245. The Council’s ecologist agreed that the wetland habitat would introduce a new habitat to the area, for which there was a need, and that with good management would achieve SINC status. Also that all the criteria relating to the designation of new SINC, set out in the Council’s SPG<sup>185</sup>, would be engaged and that the proposal’s intentions were good; rare species such as reed bunting and reed warblers could be established. The Council’s ecologist claimed that it would not be a significant area, and that the “national drive” was for large-scale places such as Norfolk, but that view is in direct contradiction of the Local Biodiversity Action Plan<sup>186</sup> and should attract little weight.

#### *The alternatives: ‘do nothing’ and the ‘country park dream’*

246. Doing nothing would threaten the SSSIs and would provide no mechanism for addressing external pressures, such as the desire for dogwalking and recreation, or harmful activities associated with trespass<sup>187</sup>. It would not address habitat succession threatening the SINC interests either. Nor would it make any progress towards the Local Biodiversity Action Plan or Welsh national reedbed targets. In contrast, it was agreed that the proposal engaged in all aspects of the BAP guidance relating to future management, mitigation, compensation and the protection of species<sup>188</sup>.

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<sup>182</sup> Docs CD 288, 289, and 294

<sup>183</sup> Doc CCC12A: Cardiff LBAP 2008, para 1

<sup>184</sup> Mr Woodfield

<sup>185</sup> Doc CD 21 page 41

<sup>186</sup> Doc ID 16a Gibson rebuttal proof at 2.4.8-2.4.9.

<sup>187</sup> Doc CD 305 for a recent example of the damage caused by trespassers to the Embankments SSSI.

<sup>188</sup> Doc CD 20 page 7cf – paras 1.3.5; 1.3.7; 1.3.9; 1.5.3

247. There is no prospect of a country park, nor of any funding for the creation of paths and the maintenance of the land. But even assuming such funding, the position would not create benefit to the two SSSIs: there would be no wetlands created, and there would remain the pressure to access the SSSIs without funding for the required wardening as well. There is yet a further reason why a country park would never be viable on this site: it could only come with too little access to justify its designation as a country park (essentially, assuming access to the SSSIs is to be restricted to protect their interest, access would be to the corridor of land to the west of the site only), accompanied by high maintenance and wardening costs.

248. It should also be noted that even post-development, the Wildlife Trust was reluctant to take on the ownership responsibilities related to the land even when it was offered to them 'gratis' along with significant funding for management and maintenance, with the result that the Nant Fawr Ecology and Education Trust had to be created to take on that role.

#### *Conclusion on nature conservation*

249. There is no basis for refusal of planning permission on nature conservation grounds: fundamentally CCW are content subject to the imposition of suitable planning conditions and the implementation of the Unilateral Undertaking<sup>189</sup>. The Council also accepts the information contained in the ES<sup>190</sup>. There is currently no mechanism sufficient to halt the bio-diversity decline of the SSSIs and the surrounding SINCs. The consequences of a 'no development scenario' would be harmful to the bio-diversity of both the appeal site and the Lisvane Reservoir SSSI<sup>191</sup>. Significant ecological benefits would result from the development and overall the nature conservation balance, together with the long term management of existing and proposed valuable new habitats, lies overwhelmingly in favour of the proposal. The balance is all the stronger when it is considered against the background, as it is now known, that the reservoir will need to be temporarily drained down in any event.

#### Traffic and transportation

250. It should be noted that the Council as Highway Authority finally raised no objection to any of the proposed access Options being considered. Matters relating to construction traffic and possible routing have been considered and other than works proposed in the north-eastern part of the site most traffic would be routed via the south-eastern access to Rhyd-y-penau Road<sup>192</sup>. There would be a construction traffic management plan to regulate such traffic agreed with the Council.

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<sup>189</sup> Doc CD 313

<sup>190</sup> Dr Latimer

<sup>191</sup> Doc ID16 para 4.1.2; 4.1.6; 4.2.10; 5.2.12; 5.3.3

<sup>192</sup> Doc 96 ES page 244

### *Accessibility and sustainability benefits*

251. Taken together, the measures proposed by the appellants represent a step change, “an order of magnitude change”, in the accessibility of the site and in the attractiveness of travelling to and through the site by sustainable means<sup>193</sup>.

Common to all access Options would be Section 106 contributions of £38,000 for a ‘tiger crossing’ on Rhyd-y-penau Road, £70,000 for the up-grading of Keeper’s Cottage Lane and car park and a bus ticketing scheme for a 15 year period funded from a £4.8m investment. Option C would also attract £195,000 for other cycle routes in the Thornhill/ Heol Hur area, contributions towards the safer routes for schools<sup>194</sup> and £70,000 towards traffic calming works in Lisvane Road.

252. The provision of the new bus service would be a major benefit, providing a much improved level of service to Lisvane and Cyncoed, in particular from Cardiff city centre. It would provide a realistic and attractive mode of transport to work and school, and service local facilities including two rail stations, the shopping centre (Sainsbury’s supermarket at Thornhill), Lisvane village, Cyncoed local centre, the leisure centre and the Cefn On country park. It would have a typical catchment of about 9,000 people in Lisvane, an area where currently only about 2% of journeys to work are undertaken by bus. Over the corridor of the bus route, there is a catchment in the order of 30,000 people. Even without the 15 year subsidy to be provided by the development, the bus service would be viable within 5-10 years.<sup>195</sup> The provision of the bus route would be supplemented by the scheme requiring each household in the development to take two annual bus passes, to offer maximum incentive for those residents to make full use of the service. Likewise, the 400 metres isochrome from the rail station would reach the Lisvane Road junction<sup>196</sup>. The Lisvane Community Council’s highway witness<sup>197</sup> acknowledged that the new bus service would be a significant benefit and was welcomed by the people of Lisvane. However, his preference for free bus passes for all, would go beyond the scope of the proposed development and if demanded would be contrary to government policy concerning planning obligations.

253. The development’s cycle routes both within the development site and in surrounding areas would also have benefit beyond the site itself, linking up routes across North Cardiff which otherwise would not be connected.<sup>198</sup> The Council have had aspirations to create such a route, but have not allocated funding, and have no ability to create routes across the appeal site in the absence of these proposals. Mr Kelly also agreed that the cycle routes were a significant benefit.

254. Footpaths (including the footway on Lisvane Road) would provide linkage across the site, reducing severance in the manner set out earlier. One notable element of the wider improvements to the highway network for pedestrians would

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<sup>193</sup> Mr Axon

<sup>194</sup> Doc CD 303

<sup>195</sup> Doc CD. 299

<sup>196</sup> Doc ID 24b figure MA rep 21

<sup>197</sup> Mr Kelly

<sup>198</sup> Doc CD 301, and ID 24 figure MA1

be the creation of a continuous footway and pelican crossing on Lisvane Road (seen as “an important element of the scheme” by the Council’s highway witness), as well as its widening, creating a much more comfortable environment for pedestrians. That, in turn, would encourage walkers from Lisvane across the site and into the rest of the Nant Fawr corridor. Circular walks across and around the site would also be available<sup>199</sup>. Contrary to suggestions by RAG, the footpath links on the western side of the lake would be attractive and not oppressively close to the vegetation or the embankment with a separation width of 41 metres available<sup>200</sup>. The Nant Fawr corridor is currently an underused resource by the people of Lisvane (see paragraph 146) and its accessibility to residents of Lisvane would be dramatically enhanced. On the eastern side, the walk would be below the crest of the embankment through the linear park<sup>201</sup>. Mr Kelly for the Lisvane Community Council also agreed that the advantages for recreational walking would be a significant benefit of the development.

255. A further benefit would be the package of traffic-calming measures to be introduced on Lisvane Road, whose benefits would include not only improvements to highway safety, but a better ambience and more comfortable environment for pedestrians and cyclists<sup>202</sup>. Improvements of this kind have been desired by the Council for some time, but still await funding.<sup>203</sup> Contrary to RAG’s assertions, there is no need for those measures to have been consulted upon at this stage. When they are brought forward, statutory undertakers and residents would be consulted in the normal way. As explained by the Council as Highway Authority, there is every reason to believe that, in principle, the traffic calming and other measures proposed would proceed. The Highway Authority also confirmed that if there were to be a traffic management inquiry, the proposals would be recommended for approval and should be expected to go ahead. That evidence is more than enough to satisfy the “reasonable prospects” test in paragraphs 38-41 of Welsh Office Circular 35/95 (see the last sentence of paragraph 41 in particular).

256. Objectors argued that the traffic calming measures would change the character of the road. That objection ignored the fact that the Highway Authority considers it necessary to implement such works irrespective of the development proceeding, subject to funding. It also ignores the fact that the area is already indicated to be an urban area by the presence of streetlights and the 30mph zone.

#### *Effect of traffic on Lisvane Road and surrounding network*

257. The Lisvane Community Council and various interested parties object to Option C, largely on the grounds that such an arrangement would cause unacceptable levels of congestion and would be unsafe.

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<sup>199</sup> Doc CD 97 ES Fig 10.2

<sup>200</sup> Doc CD 97 Fig 6.8

<sup>201</sup> Doc CD 15 appendix 10 (separately bound design statement) pages 78/79/115

<sup>202</sup> Mr Axon in response to questions from RAG

<sup>203</sup> Mr Dawson evidence in chief and in Doc ID 12 Appendix B1

258. As to network congestion, the appellant's highway evidence (agreed in total by the Council) was that there would be no significant increase of traffic along Lisvane Road, or indeed any other road. The effect was judged to be slight. The greatest effect on any point of the network would be only a 19% increase on Lisvane Road between the site access and Mill Road, which while unacceptable to local residents, would be wholly acceptable in transport policy terms. The Council agreed that the road safety conditions could be improved as a result of Option C being implemented and that increased flow rates would be unlikely to increase accident rates. The S.106 funding would provide for traffic calming and management improvements along Lisvane Road through reduced traffic speeds, thereby benefiting all highway users and making the route more attractive to modes of travel to the rail station, schools and bus stops.

259. The assessment of network congestion does not depend only on the traffic model; the model is no more than a tool to help with that judgment. There is every reason, however, to consider that the model in this case has been properly validated.<sup>204</sup> Furthermore, the proposed design is in accordance with Manual for Streets (MfS). There is no reason to suppose that the Design Manual for Roads and Bridges (DMRB) standards of design ought to have been applied. As the MfS makes plain at paragraph 1.4.4, the DMRB is "not an appropriate standard for most streets, particularly in lightly trafficked residential areas."<sup>205</sup> At page 31 of MfS reference is made to a place for 5000 people, significantly less than proposed at Llanishen. This illustrates that highway design has moved away from prescriptive and inflexible rules, to an approach where the reasons for designing in a particular way should prevail<sup>206</sup>. In any case, the appellant's modelling has been validated against the criteria used in DMRB<sup>207</sup> providing a 95% confidence in the findings<sup>208</sup>. There is, therefore (contrary to Mr Kelly's evidence) no requirement for a right-turning lane at the northern access to the site. That requirement belongs to DMRB guidance providing for circumstances such as where articulated lorries would enter industrial estates. The proposal is of an entirely different order of magnitude. Even if DMRB were to apply, however, the requirement is not to provide such measures, but to give consideration to their use<sup>209</sup>.

260. Mr Cooper's view was that the Fidas Road/Rhyd-y-penau junction is substandard and that additional congestion would be unacceptable. Whilst this junction may not be ideal, it is typical of the arrangement normally found in urban areas. His other criticism regarding the swept path of buses using the Lisvane Road junction is not accepted. The scheme has been designed<sup>210</sup> to accommodate 12

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<sup>204</sup> Mr Axon in answer to questions from RAG.

<sup>205</sup> See also MfS para 7.9.5 and TAN18 para 5.7

<sup>206</sup> Manual for Streets section 2.2

<sup>207</sup> CD Doc 164A appendix G page 11

<sup>208</sup> Ditto para 4.16 page 14

<sup>209</sup> See Doc CD 279/ID 24a

<sup>210</sup> Doc CD 269C figure 36C

metre long buses (rather than 10 metre long buses normally used in Cardiff<sup>211</sup>) with adequate width for passing. The Cardiff Bus Company are satisfied with the design.

261. Mr Cooper's criticism of the appellant's highway evidence was misplaced and was based on an overly simplistic analysis of the way drivers behave. The criticism relied on an unreasonable analysis of the "costs" associated with any short delays in journey time. If taken to its logical conclusion, this amounted to an argument that there should be no development anywhere. It would be unreasonable to conclude that any minor delays created by the development would be transmitted through much of Cardiff's network, to the extent that it would become material in transportation policy terms. His methodology is designed to assess the benefits arising from schemes which reduce car traffic – i.e. applying savings as costs when traffic is added.

262. Thus references to congestion costs in relation to major transportation alternatives should not be applied to any localised effects arising from a specific development proposal. Mr Cooper's same arguments were afforded little weight when considered at the last Inquiry. Moreover, the logical inference of Mr Cooper's argument is that all time spent by car whether delayed or not, incurs a cost that should be resisted: that is not Government policy which seeks to prioritise other forms of more sustainable transport. Thus other modes of transport should be made more attractive to induce a modal shift, an approach not fully accepted by Mr D Evans. Even for the old and infirm, the design of the scheme would make movement easier.

263. Similarly, Mr Kelly's criticism of the Paramics traffic generation model, failed to recognise that abnormalities within the road network and which affect traffic flows, are normal. The road works along Lisvane Road have been acknowledged in the validation report. It is also noted that in comparison to the 2006 flows, the 2008 flows used in the model show an increase of 4.8%, which appears reasonable if slightly higher than normal traffic growth.

264. As to highway safety, there would be an improvement resulting from the traffic management scheme changes put forward in agreement with the Council<sup>212</sup>. Coupled with the narrowing of the carriageway over the bridge and the regulation of traffic priorities and speeds, the building-out of the carriageway as it crosses the bridge would help improve visibility from residents' driveways. The Highway Authority stated that the proposals "undoubtedly deliver a much safer circumstance than currently exists. The level of safety on this section of road would rise accordingly." This applies to all traffic and to all users, vehicles, cyclists, and pedestrians, and would amount to "a significant benefit". Concerns expressed about noise from rumble strips should not arise as new forms of 'ripple strips' would typically reduce speeds from 37 – 26mph, without undue noise being generated. The characteristics of Lisvane Road would not change as a result of the development or Option C.

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<sup>211</sup> Doc CD 269C figure 20

<sup>212</sup> Doc CD 269C revised, figure 36C:

265. Currently, traffic along Lisvane Road travels at up to 37mph (at the 85<sup>th</sup> percentile). The appellant's and Highway Authority witnesses considered that with the traffic management measures that could be expected to be reduced to the mid-20s, or further to 20mph. Mr Kelly agreed that if that were to happen, this would be a significant benefit, that in turn would decrease the potential for accidents. At present, the accident rate is at, or slightly below, the UK national average for the type of road, but as confirmed by the Highway Authority, that could be expected to reduce further. It was also agreed that safety would also improve for third parties who have accesses within the area of Lisvane Road subject to the traffic management scheme<sup>213</sup> and the residents of Crofta and Woodside Court, by reason of the reduced speeds, notwithstanding the concerns they express to the contrary.

#### *Choice of Options*

266. All three traffic Options are acceptable in highway terms. Option C, however, is to be preferred, because in the judgment of both the appellant's highway and planning witnesses, it would carry with it the least impact on the Nant Fawr meadows and the greatest benefits, with the much needed traffic management proposals for Lisvane Road being provided as a part of it.

267. The Highway Authority and Mr Cooper argued that Option A would be preferable. The Highway Authority's views had influenced the proposals before the previous Inquiry, including the crossing of the Nant Fawr corridor and meadows by the majority of development generated traffic. But those views related to highways usage only and did not consider the planning benefits arising from Option C. While it would be more inconvenient for drivers travelling from or to the new housing, it would encourage the greater use of the buses that would have the exclusive advantage of the use of the southern access to Rhyd-y-penau Road. It would also encourage travel by other more sustainable modes, including cycling and walking. Importantly, the proposed traffic management measures, which are considered by the Council to be necessary in any event, would only come forward with Option C. That is a significant benefit of Option C<sup>214</sup>.

268. Ultimately, however, the Highway Authority agreed that Option C would be acceptable, being safe and fully in accordance with policy advice in relation to highway design. The figures as to traffic distribution are not disputed, nor are the accident rate figures<sup>215</sup>. Preference for one proposal over another cannot, of itself, found a reason for refusal.

269. There are other variations besides: the proposed location of the bus gate is flexible,<sup>216</sup> and design techniques could be used to make available limited access to the southern-eastern car park from the southern access. Thus if the south-eastern car park were to be sub-divided to allow 14 of its 22 car spaces to be accessible from the east, it could result in only 30 vehicle visits per day travelling from the east (over a 12 hour summer's day). As confirmed by the appellant's highway

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<sup>213</sup> Doc CD 304 photographs of driveways opposite junction

<sup>214</sup> Doc CD 303 traffic management proposal, common to all three schemes, and Doc. CD306

<sup>215</sup> Docs. CD 277 and 278 respectively

<sup>216</sup> As confirmed by Mr Dawson

witness, if such a variation were to be preferred by the Minister, a condition could provide that such access be provided.

### Other matters

#### *Housing policy*

270. LP policy 21 does not allocate the site for housing, but that does not mean that the development would be contrary to that policy, or give rise to any matter to which adverse weight can be attached. That policy is not a criteria-based policy as to the location of new housing, but only provides a list of allocations intended for development during the period of the Local Plan up to 2001. Secondly, paragraph 6.2.8 of the LP makes clear that policy 21 is not intended to exclude housing development on other sites or provide an exhaustive list of suitable locations. Four criteria applying to suitable housing locations then follow, all of which are met by the current application: (i) a condition is proposed to tie the design of the development to the design statement; (ii) there would be a range of types of affordable housing (97 in total); (iii) open space would be provided in accordance with policy 31 and (iv) community facilities would be provided in the shape of the watersports and wetlands/wildlife centres.

271. Moreover, development on this site would fulfil each of the relevant objectives of the LP<sup>217</sup>, in particular so far as any relevant locational considerations are concerned:-

- (i) Objective 1 – the development would enhance quality of life and provide a well designed scheme, providing access to and quality of housing to rent and buy, employment prospects, transport provision, sport, recreation and leisure facilities, and scenic quality. It would contribute to an active, healthy and efficient city.
- (ii) Objective 2 - new housing and other facilities would be provided, balanced with environmental and conservation interests.
- (iii) Objective 3 - existing urban land would be enhanced in image and profile to provide family housing, without “town cramming”: the increase in density is a good use of land.
- (iv) Objective 4 - the development would enhance the attractiveness of the area for the benefit of for visitors, tourists and local people alike.
- (v) No conflict with objective 5 arises (City centre, district centre and local issues)
- (vi) Objective 6 - the transportation requirements of the highway authority would be fully met by each of the various Options put forward, each of which greatly enhance opportunity for travel by bus, cycling and walking.
- (vii) Objective 7 – the development would reduce pressures for development in the open countryside

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<sup>217</sup> Doc CD 16 page 1

- (viii) Objective 8 - there would be an overall nature conservation benefit.
- (ix) Objective 9 – not relevant – deals with the historic built environment.
- (x) Objective 10 - the development would provide good design, in accordance with the Design Statement.
- (xi) Objective 11 - the design of the development's facilities would be wholly DDA compliant, and provide access to both old and young.
- (xii) Objective 12 - community facilities and public open space would be provided, remedying the deficiencies in certain areas as set out in the SOCG.

272. Further to those matters, must be weighed the need for housing of the kind proposed. A new material consideration, not before the Inspector on the last consideration of proposals for this site, is that based on the building rates over the last 5 years, there now remains only 4.4 years supply of housing land in Cardiff. In 9 of the last 10 years, building rates have exceeded the average over the Structure Plan period<sup>218</sup>. The picture can change rapidly: at 1 April 2006, based on average building rates there was a 19.8 years supply, but by 1 April 2007 that had been revised that figure down to 7.9 years, even though there had been no significant change in the intervening year. Thus, it is not appropriate to engage in stop-start planning based on perceived market conditions at the time of a planning inquiry. The need for new housing is ongoing and there is no evidence to suggest that it is lessened due to current market conditions – and the need for affordable housing is increasing. This is borne out by the results of the housing needs survey 2002,<sup>219</sup> the recent ministerial speeches<sup>220</sup> and the Council's acknowledgement<sup>221</sup> that the level of need for rented housing has increased and is increasing, and that housing for special needs is also to be welcomed. The proposal's compliance with policy H4 is also significant in this context.

### *Hydrology*

273. The assessment of flood risk potential and a flood consequences assessment<sup>222</sup> completed in agreement with the EAW demonstrated no risk of flooding in 1:100 and 1:1000 flood events. Surface water systems would be attenuated to address flows including those arising from climate change. Similarly the long term operation and management of the proposed wetlands have been agreed with the EAW.

274. The historic water quality of Llanishen reservoir has been very good with favourable nutrient elements, due largely to the only water source being from rain. Effectively it is a closed system. The potential risk from run off from the

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<sup>218</sup> CD 285 joint statement on land availability

<sup>219</sup> Doc CD 29, Housing Needs survey page 6, para 3.3

<sup>220</sup> Minister's speech 15 October 2008, Doc ID 23 appendix 4

<sup>221</sup> Dr Hockaday in cross examination

<sup>222</sup> Doc CD 97 ES Section 13

surrounding development site and future residential gardens and other spaces, would be managed through appropriate filters, screens and traps and sustainable drainage systems, together with optional additional measures<sup>223</sup>. These could include storage tanks as part of a first flush network located beneath hard surfaced public areas where flows could be attenuated: such matters are standard practice and for the detailed design. With these systems in place, the water quality of the new lake would be good.

#### *Fly fishing*

275. RAG raised objection on the basis that fly fishing had historically taken place at the reservoir. Such permits are no longer issued, and have not been since Dwr Cymru ceased stocking the reservoir with fish some years ago. Thus in terms of policy, there would be no loss of this recreational facility resulting from the development. There are alternative locations available for fly fishing in any event, and consideration may be given to other forms of [reel] fishing taking place at the proposed lake. No material weight should be afforded to this objection.

#### Conclusion

276. For all the above reasons, the appeal should be allowed and planning permission granted subject to the agreed conditions.

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### **The Case for Cardiff County Council**

The main points of the case are as follows:

277. There are four principal<sup>224</sup> issues in this case:

- (i) Whether the adverse impact of the proposals upon the role of the site as open space is outweighed by any of the benefits. This includes its role as part of the Nant Fawr strategic open corridor, as amenity and nature conservation open space and as recreational open space. The latter includes whether the proposals would result in inferior facilities for sail training in Cardiff.
- (ii) Whether the harm caused by the impact of the proposals upon the notified ecological interest of the site and neighbouring areas, including the Lisvane SSSI and the proposed Nant Fawr meadows SINC, is outweighed by the benefits for ecology contained within the proposals. In this issue is included the adequacy of the proposed S.106 obligation for the management of the site.
- (iii) The context for the consideration of the proposals in terms of policies in relation to the provision of housing and whether it would enjoy the status of pdl.

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<sup>223</sup> Doc CD 96 page 301 13.5.19-21

<sup>224</sup> LPA's oral opening statement

- (iv) Whether access Option C would result in unacceptable reduction in highway safety or environmental capacity along the routes from the site to the City.

278. In respect of the fourth issue (Option C), as a result of further consideration during the inquiry by expert witnesses for the parties and opportunities granted for third parties, the Council no longer pursue any highway objection to the proposals.

#### Drain down of the reservoir

279. This is the developer's ultimate threat: it is not a new threat and was raised at the last Inquiry. However, circumstances have now changed as a result of the failed possession proceedings and the Council's right to renew its lease for another 5 year term under the Landlord and Tenant Act 1954. So long as the lease exists the Council will enjoy the right to use the reservoir. A further hearing is due later in the year to identify the terms of the lease in the event of parties failing to agree. Thus the Minister can safely conclude that there is no present prospect of the appellant enjoying the right to permanently draining down the reservoir.

280. As to the right to drain down on a temporary basis and its impact, the case proceeded on a plainly unsatisfactory basis. There was no reference to the matter in the appellant's Statement of Case nor did the exchanged evidence address the point. Then only at the close of the last working day before the opening of the inquiry did the Council receive the report from the RAI. Instead of receiving a proof of evidence from the RAI in the usual way, he then appeared at the Inquiry at less than 24 hours notice and before the Council had obtained instructions on the matter.

281. The result of the RAI's recommendation is that the right of the Council to use the reservoir for the purposes of sailing would be interrupted both during the temporary drain down process and during the works then required to the reservoir and the subsequent period whilst it refills naturally to a state to permit re-use. The drain down is estimated to take one month maximum, but the evidence with respect to the length of that latter period is far from precise. The RAI suggested -*"it could take 8 years unless supplemented by water from other sources"*; *"We can get severe storms in which case it would refill more quickly. 8 years would be the extreme to me - the range is 3 to 8 years"*. In response to the question of whether if it took 8 years to refill was there a danger that the lining might crack, the RAI stated: *"reservoir is so small it could refill overnight in a storm. It would refill as soon as it could but not as long as 8 years - 200mm in a night might bring it up. It could be empty for 18 months without an effect on the core..."*.

282. None of these answers, however, took account of the appellant's obligations under the lease which would include an obligation to take all reasonable steps to minimise the period of disturbance to the occupation of the sailing centre. That is likely to include the provision of water by diversion of the Nant Fawr.

283. Thus the period of interruption could vary between a matter of months to a matter of a few years and less than 8 years in any event. The length of interruption would depend upon the quantity of rainfall and the extent to which that source is supplemented by others such as a diversion of the flow of the Nant Fawr. The

appellant suggested that the latter would not be used because the Council's ecologist<sup>225</sup> did not favour its use as a result of the potential impact on the neutral waters of the Reservoir SINC. However the impact of the evidence of the RAI was that it was uncertain whether the vegetation supporting the SINC designation could be saved in the course of the exercise. The RAI stated that he would want all the water to be removed in order to see and test the condition of the pipework on the reservoir's bed and as a result water quality is unlikely to be such a significant priority. In any event there is no obligation upon the appellant in the case of temporary drain down to use a coffer dam or otherwise to protect the SINC interest and there is no evidence of any commitment from them to do so.

284. The appellant suggests that such an interruption is inevitable, but for reasons stated earlier under the heading of 'Consequential legal submissions...' <sup>226</sup>, the Council does not necessarily accept that position. There is no certainty that the appellant could implement temporary drain down without obtaining further third party consents or procedures. Further, the report on its face does not make such a process inevitable, despite the RAI's suggestions to the contrary. As to the installation of piezometers into the embankments, the ES expressly refers to this matter as a result of concerns about stability <sup>227</sup>. The RAI stated orally that this was no longer necessary though how he could now foresee the result of the investigation into bank stability was not disclosed. However, it remained clear that the operation was one that was plainly likely to be supervised and, if not by the RAI, by the site engineer or equivalent.

285. As to the lease, the appellant will need to justify any disruption of Council's use of the water in the reservoir and, in such a context, the Court could potentially be asked to explore the certificate and the need for such a radical measure to achieve the desired inspection.

286. The Council refers to these processes because the RAI's recommendations were remarkable for their lack of any substantial foundation. It was a combination of anecdote and a failure of the appellant to follow its own responsibilities as reservoir owner to maintain the valves as recommended in successive RAI survey reports that led to them being dealt this bonus to their case. The reported anecdote was that of the site engineer to the RAI to the effect that pipes of a similar age to those in the bed of the reservoir were springing leaks within the housing area of the city. These independent legal processes would allow proper scrutiny of the case for temporary drain down in a full and considered manner not open to this inquiry.

287. It should be noted that the report of the RAI is not entirely conclusive of the need. On its face the report makes his recommendation contingent on the change of use of the reservoir<sup>228</sup>: "*Clearly, if the operating regime (extended pressures etc) of the pipework change in use of the reservoir, it becomes important to understand the condition of the pipe, its location, route etc and the continuation of the valving*

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<sup>225</sup> Dr Latimer

<sup>226</sup> Earlier paragraph 70

<sup>227</sup> Doc 97 para 6.3.3

<sup>228</sup> Doc CD 244 B para 10.6 p.11

*arrangements.*” The report itself resulted from a perceived need to reassure the proposed owners of the site in the event that planning permission was granted to the appeal proposals<sup>229</sup>. It was clear therefore what change of use the RAI had in mind<sup>230</sup>. If there were any remaining doubt on the matter, the RAI referred in the contemporaneous report on Lisvane,<sup>231</sup> both to the owner’s intention to drain down and re-use Llanishen “for other purposes” as well as to its future ‘discontinuance’. Whilst in oral evidence, the RAI sought to avoid that interpretation of his report, it should stand on its own terms not relying upon any additional supplementary interpretative material from its author.

288. However, the Council accepts that for the purposes of these proceedings only, we acknowledge that the burden of the evidence is that it is more likely than not that there will be some temporary disruption of the use of the reservoir in the near future as a result of a temporary drain down of water as required by the RAI.

289. If such a temporary drain down took place it would be a temporary disruption of the Council’s rights to use the reservoir for sailing and their lease of the reservoir would continue through the period of disruption. For a temporary period there would no doubt be some visual unsightliness associated with the empty reservoir, but since that would occur whatever the long term result for the reservoir, it is not a factor to weigh in favour of the appeal proposals save to the extent that it reduces the weight to be given to the reservoir’s SINC interest as this action makes its continuation uncertain.

#### *Open space*

290. The appellant claims many benefits for the scheme in terms of enlarging public access, connectivity and the protection and expansion of the wildlife and recreational interests of the site. Those are plain benefits that need to be placed in the balance. Taking connectivity as a convenient example, the Council does not challenge their ability, either alone or in combination, to outweigh the loss of open space of the type lost. Wherever there is a tranquil corridor of strategic open space, there will some disruption to the connectivity of communities. Driving a road through the Nant Fawr corridor to connect those communities means loss of open space and disruption of the function of the gap. Building 324 dwellings in the open space makes a radical change to the corridor through which the connection is made. In view of the range and quality of existing public connections to the Nant Fawr corridor that exist at the present time, there is insufficient demonstrable need for further connection that makes this an acceptable price to pay.

291. All the alleged benefits are only brought about as the result of a clear and irreversible act of destruction and associated change of character. That is the loss of more than 9 ha or 26%<sup>232</sup> of the open space in the heart of the Nant Fawr

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<sup>229</sup> Doc CD 282 first page 4<sup>th</sup> para.

<sup>230</sup> Also at CD 244B P.10 para 10.6

<sup>231</sup> Doc. CD244 B p.5 para 9.1

<sup>232</sup> 7.3ha housing + new roads 1.8 + car parking 0.1 = 9.2 ha of 35.69 ha: CD286. Note this is the minimum built area as CCC17 gives the agreed built area as 9.95 ha.

corridor that was intended to remain open in perpetuity as part of the essential landscape structure of the setting of the City of Cardiff.

292. This issue has not changed since the last inquiry. The Inspector concluded: *"the proposed development would cause very serious harm to the character and coherence of the Nant Fawr open space corridor, of which the site forms an important part. The harm caused by the introduction of the proposed housing development and the construction of the proposed access road over the Nant Fawr Meadow would not be offset by the various compensatory measures and positive features of the scheme which are proposed. The development would bring about a significant loss of open space of amenity and nature conservation value and would conflict with local plan policy 7 and structure plan policy B4<sup>233</sup>".*

293. There has been no change in national policy relating to these matters and the relevant development plan policies set out above remain the relevant policies for this inquiry. The site lies in the heart of the open space of the Nant Fawr corridor. It is identified in the LP as having 'a significance to the city as a whole', a quality of 'particular value' and to which is accorded 'particular protection' so that the 'development of such areas will not be permitted' and is 'opposed'<sup>234</sup>.

294. This defect is one that this appeal scheme clearly shares with its predecessor. Having learned at least one lesson from the 2006 inquiry, the ES of April 2008 acknowledges that *"The application site is located in the green corridor that links the city to the countryside to the north<sup>235</sup>".* However, it then offers the absurd conclusion that *"the proposal is not considered to result in the loss of open space provision..."<sup>236</sup>*. It does so by referring to the increase in publicly accessible open space (which will in fact be largely private open space to which the public will have managed access in accordance with the s.106 Obligation) and not making allowance for the loss of the substantial area of private open space within the corridor. However, the key point for the underlying purpose of the policy is in ensuring the openness and character of the corridor regardless of whether the same is public or private in status.

295. This function has been seen as worthy of protection since the 1950s. These river corridors form part of the essential open space structure of the city providing a strategic element of its urban form and quality. They link the City with its rural surroundings, they provide green lungs to the heart of the City, they accommodate wildlife corridors of movement, mosaics of habitat and provide in places opportunities for formal and informal recreation. In brief, they are essential to the form and quality of Cardiff as we know it. Mr Ewart Parkinson spoke of the linear and continuous structure that the river corridors gave to the city, which made it *"a city like no other"*, provided *"a unique quality of life to Cardiffians"* and which were *"crucial to the whole city structure"*. This distinguished architect and guardian of

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<sup>233</sup> Doc CD 102 para 10.99 + 10.56: *"I conclude that the proposed development would cause serious harm to the quality, integrity and coherence of this part of the Nant Fawr open space corridor"*.

<sup>234</sup> Docs CD 16 – LP para 3.3.7, CD 23 - SPG paras 3.9 and 3.11, CD 17 SP policy B4

<sup>235</sup> Doc CD 97 - ES para 5.1.22

<sup>236</sup> Doc CD 97 - ES para 5.1.24.

the urban structure of the City was in no doubt that the proposals would “*lie in the middle of the corridor and disintegrate its integrity*”<sup>237</sup>.

296. Local Plan policy 7 only sanctions the loss of recreational or amenity open space where two criteria are satisfied: (i) the open space has no amenity or nature conservation value; or (ii) the developers provide satisfactory compensatory open space.

297. The amenity and open space values of the appeal site are undoubted whether or not you place the recreational use of the existing reservoir in the balance as part of the amenity value. The LP at para 3.3.7 specifically identifies areas of woodland and large expanses of water as example of amenity open space for these purposes. In such cases the LP advises: “*The potential loss of such areas will be also be assessed in terms of their importance to the character of the local area and their significance to the city as a whole. For example, the valleys of the rivers Ely, Taff, Rhymney and Nant Fawr, provide corridors of open space linking the urban area with the countryside*”. The ‘also’ infers a third criterion being applied to the loss of areas such as this. Further, paragraph 3.3.9 refers in terms of compensatory measures being generally required to be like for like in terms of quantity and quality.

298. Thus, at local plan level, the compensatory open space on offer is substantially diminished in terms of quantity and in qualitative terms, the loss of the quality of openness and semi-rurality at the heart of one of the river valleys of City-wide importance, is marked and irreversible.

299. The Structure Plan policy B4 is rather more restrictive. The protection, conservation and enhancement of such areas is favoured and “*Development of such areas will not be permitted, except on those sites identified for development by other development plan policies. The creation of a coherent network of green spaces and corridors will be favoured with particular protection being given to river corridors*”. This is most certainly not a site identified for development by any development plan policy. It is a location which is to be given particular protection from development. The claim appears to be that the appeal proposals give more coherence to the corridor and therefore should be favoured as an exception to this policy. The river corridors are themselves exemplars of a coherent network as open space reaching, largely unobstructed, from the countryside into the heart of the city. There would be benefits from enhanced public access from the proposals but at an unacceptable loss of the essential quality of openness in the heart of the corridor.

300. The appellant seeks to address the point by referring to the Open Space SPG<sup>238</sup> and seek to promote new interpretations of the relevant policies. They proceed on the basis that if the housing element cannot be seen or heard from outside the appeal site it is harmless.

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<sup>237</sup> See good illustrations of this are in the Doc RAG 3 photos RAG/2 to RAG/4, map at CD 267 and OS map in ID 9A (the ‘blue book’).

<sup>238</sup> Doc CD23

301. It is true the external viewpoints would be largely confined to private views from the surrounding housing. However anyone crossing the Nant Fawr corridor at this point by foot, bicycle or vehicle would inevitably see the proposed new housing estate around the lake and be aware in terms of seeing and hearing the human activity associated with 324 new units of housing. Anyone using the Nant Fawr Meadow would see the vehicles and other activity associated with the estate. The noise assessment of the ES<sup>239</sup>, other than for the construction period, related to traffic noise to the residents of the neighbouring roads and an assessment of recreational noise generated by the sailing and other boats on the lake. There was no assessment of the potential of the generation of noise by the estimated population of the 324 houses which is put at a nominal 810 persons<sup>240</sup>, or the use of the formal recreational areas upon the users of the Nant Fawr meadows where the only attenuation would be by distance. The substantial change in character cannot be denied.

302. The SPG on Open Space builds upon the existing policies. Its paragraph 3.7 repeats the LP in identifying woodlands and water bodies as examples of open spaces of amenity value. Para 3.9 refers to a *'heightened'* importance to the area *"if the areas make a contribution to the city-wide provision of open space"*, a phrase equally applicable to the role of the river corridors as it would be to a major park or sporting facility. That is made plain by paragraph 3.11 where the five river valleys are again identified as *"continuous corridors of open space linking the urban area with the countryside. These areas although not all publicly accessible create features of city-wide importance and have potential for further improvements. Proposals which would cause unacceptable harm to the integrity of these areas will be opposed"*.

303. From this can be derived the following:-

- (i) Public access is not an essential feature of serving the function of these continuous corridors of open space.
- (ii) These areas of open space are of city-wide importance.
- (iii) They are to be protected from unacceptable harm to their integrity.

304. The appeal proposals would substantially reduce the amount of and violate the integrity of such an area of open space in the heart of the Nant Fawr river valley corridor and for that reason alone deserve to be refused planning permission. There are no countervailing benefits proposed that outweigh that significant and irreversible harm.

305. The appellant seeks to argue that the previous Inspector's conclusion<sup>241</sup> as to the effect that the improvement measures proposed to the open space function of the site which are essentially very similar to those currently on offer, could not properly be regarded as open space provision to compensate for the loss of amenity and nature conservation importance lost to the development are out of

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<sup>239</sup> Doc CD97 chpt 11

<sup>240</sup> ditto para 5.1.30.

<sup>241</sup> Doc CD 102 para 10.68

tune with the new SPG. Whilst the nature conservation issues may be different in terms of the loss of the open quality of the land at the heart of the corridor there is no difference of any substance between the two appeal proposals in terms of amenity open space. It is an obvious point that changing the quality of the open space remaining, making it more accessible to the public etc., is in no sense a substitute for the loss of openness. The previous Inspector was saying no more than the proposals failed in both quantitative and qualitative terms to make up for the loss of the essential characteristic of the appeal site. Accordingly it remains a valid conclusion unaffected by the SPG. In fact the references in that document to compensatory provision in paragraphs 3.19 to 3.21, so emphasised by the appellants, are not new. They were set out in a similar albeit briefer fashion in the LP in the last sentence of paragraph 3.3.9<sup>242</sup>.

306. The Council acknowledges that the harm done to the open space is less than that of the first appeal proposals, in light of the reduced visibility of those now proposed. That does not alter the point that it is fundamental to both proposals that there is the loss of a significant part of the open space comprised within the appeal site. The land is in private ownership and for the most part has no public access. Nonetheless, it is of considerable amenity importance, because of its pivotal role within the Nant Fawr open space corridor and its contribution to its physical and visual quality and integrity, which is appreciated from adjacent publicly accessible areas and from adjoining residential areas<sup>243</sup>.

307. The appellant's planning witness<sup>244</sup> suggested that there may be a conflict between LP policy 7 and SP policy B4. The Council disagreed and it was conceded that there was no conflict. Moreover, section 38(5) of the 2004 Act and the familiar guidance of PPS12 require that in the event of conflict the more up to date policy should prevail; i.e. policy B4. The appellants also suggested that the Council were urging the interpretation of these policies as if they were either Green Belt or Green Wedge policies, which is impermissible. That is incorrect; the Council advance and interpret these policies as open space policies. Self evidently one of the qualities for which a designated open space corridor may be protected is the characteristic of openness. Second, neither Green Belt nor Green Wedge designations may be appropriate to protect this corridor as it lies within the built up area of the City.

308. Finally on this point, the Council do not oppose the appeal proposals on the grounds of prematurity. The Council are confident of the merit of their case not to need to make the point. Nevertheless, if any such major exception to policy were to be sanctioned, one would expect that to have been first explored within the development plan process with the advantage of evaluating the proposed loss in the wider perspective of the role of the strategic river corridors as a whole and the terms of the policies appropriate for their protection. Some may think that London is fortunate in having the designation Metropolitan Open Land available to protect its strategic open space and that cities like Cardiff could benefit from a similar

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<sup>242</sup> "However, in some cases it may be more appropriate to not to exactly replace existing provision but for the developer and the local planning authority to agree an alternative form of provision more appropriate to the needs of the local population".

<sup>243</sup> Doc CD 102 Inspector's report para 10.66.

<sup>244</sup> Mr Waldren

protection being attached to their strategic open space, since neither the Green Belt nor the Green Wedge policy is appropriate for that purpose.

### *Ecology*

309. The Council have always accepted that in this aspect this appeal is a very different case from its predecessor, in that the proposals offer the benefit of the protection of the overwhelming majority of that part of the Embankments SSSI that falls within the boundaries of the appeal site. The Council accepts that this is a greater degree of protection than that which is currently afforded to the SSSI by the statutory management regime. Thus it is a question of balance: overall there would be a loss of bio-diversity. However, the fundamental nature conservation objection relating to harm to the embankments SSSI, that was associated with the first appeal, does not arise.

310. As a result, the case is concerned with lower order impacts and finer balances. The Council does not deny also that the protection afforded to the remaining wildlife interest outside the reservoir itself, to Lisvane Reservoir and the provision of the wetland and interpretation centre would be of benefit, but they do not come without cost. Potentially the three types of pondweed, which are declining and with few sites in Wales,<sup>245</sup> and the site's local distinctiveness, would be lost. Disruption would occur during the construction period and run the risk of accidental spillages. Once built, there is the urbanising influence of the housing itself, the increased population of humans and domestic pets in the corridor the results of which can only be the subject of speculation.

311. Moreover, the Council's ecologist had reservations with respect to the increased NOx emissions and the changes to the hydrology regime upon the fungi. It is acknowledged that these are to a degree speculative, but they are the result of genuine scientific doubt; these are untested matters. Likewise there remained concerns about polluting run-off from the urban context for the water body. Whilst average precipitation events can be designed for, abnormal events cannot be ruled out. This could affect the pondweed within the reservoir. Although translocation might be possible, the ES suggests that it would be unlikely that the species would survive. However, as noted above, it is now acknowledged that with drain down, the high quality of the Llanishen water is no longer a significant priority.

312. The proposed wetland centre would be much reduced in area from that proposed at the last appeal: it is reduced from 5.8 ha to 1.76 ha, or to a third of its former size. The wetland reedbed and the centre as a concept are not new to the City, or its environs, however welcome they may be as a supplement to the existing provision, together with the fact that they make good the target for the provision of reed bed in the City. However the habitat of the reservoir is recognised by its SINC status, is unique to the City and is at risk of being destroyed by the proposal and, in any event, would be greatly reduced in area. The road access would cross the Nant Fawr meadows draft SINC, as well as providing an alien and disruptive land use within an area valued for its semi-rural quality and quiet informal recreation.

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<sup>245</sup> Doc CD 291 map on page 175 shows lost sites

### *Sailing*

313. The existing facility offers a spacious area of water<sup>246</sup> in a largely open situation with a tradition of excellence in the teaching of competitive sailing. In addition to other sailing activities and for a small cost to parents, the reservoir provides safe, introductory opportunities for some 1050 school children annually, who would not be welcomed on such terms at commercial sailing schools<sup>247</sup>. The facilities either as they are now, or as proposed should the appellant demolish the existing buildings, are not state of the art, they may not attract those looking for softer more welcoming surroundings, but they are fit for their particular purpose.

314. The alternative is common place, urban, small water facility that is replicated elsewhere within the area and the country generally. It would be suited to a degree to beginners and for a mix of watersports. In its own way it would no doubt be of value.

315. However that unique quality of the existing facility would be lost. The 23.8 ha<sup>248</sup> would be reduced to 5.9 ha, or by some 17.9 ha or 78%. To put it in a Cardiff context it would be less than half the size of Roath Park Lake. Whilst the RYA and Sports Council's guidelines for the areas required for sailing certain types of boats may be exceeded, those measurements should be regarded as minima and not ideals. The school would be broken up; there would only be beginners on the new lake. The potential for an integrated teaching facility would be lost. The wind would not blow unobstructed: it would be surrounded by buildings up to three storeys high close on two sides. The winds would, it was agreed,<sup>249</sup> be 'flukey'. The appellant's sailing witness was found from an internet search. He was of very limited value to the Inquiry in light of his private agenda with respect to the wider use of the Bay and his lack of any real knowledge of the sailing centre, which he only visited for the first time after the production of his proof of evidence.

316. The appellant sought to stress the reduction of use of the reservoir by the Council as they develop the use of the Bay. However, for the past few years the tenure of Council on the reservoir has been under sustained attack from the appellants: it was an impediment to their redevelopment proposals. It was not until the last inquiry that the existence of their protection under part II Landlord and Tenant Act 1954 was recognised. The appellant then took steps to order the demolition of the buildings the subject of the lease, in order to require the Council to give up possession. Lengthy and costly County Court proceedings followed which ultimately upheld the Council's right to remain and to take a new lease which itself would be similarly protected. Those proceedings continue as the terms of the new lease have not been agreed. In addition to these misfortunes the Centre lost two of its key staff. The Council as operator of the sailing centre would not be prepared to commit the time and resources to the sailing centre as it has, were it not committed to and convinced of its long term future as a centre of excellence. The

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<sup>246</sup> Doc ID 10 - Mr Howell page 2.4 refers to 23 ha of water currently available.

<sup>247</sup> Doc ID 10 - Mr Howell's appendix 2 page 2

<sup>248</sup> Doc CD 97 - ES April 2008 para 2.1.5.

<sup>249</sup> Mr Barnes agreed in cross examination

fact that the facility has remained in use at all in the light of all these pressures is a testament to its ultimate worth.

317. In this context it would have been foolhardy for the Council to have relied solely on the reservoir as its teaching facility of choice. Should planning permission be refused for these proposals, it would remain with substantial potential for the future. In the years running up to 2012 sporting excellence is a national aim. Here is a venue that, however some may be surprised, has proved to succeed in nurturing real excellence: it cannot be replicated. The appeal proposals cannot attempt to do so. The Bay would provide a different environment for the more experienced that is good in its own right, but the centre of excellence would have been dismembered meanwhile. Moreover there is a lack of flexibility as to the use of the Bay on or after periods of heavy rain that lead to pollution events. No such restrictions apply to the reservoir.

318. Credit should be given to the funding of the intermediate measures that would be on offer via the s.106 obligation, but they would not maintain the existing centre. The previous Inspector's report relating to the distinguished history cannot be contradicted<sup>250</sup>. There concern was expressed that the long term position remained the concern of the Council since temporary provision is in place via the s.106 obligation. The position remains that the facility is by these proposals likewise substantially diminished in size, wholly different in character and causes *"the serious fragmentation of the operational base of the range of activities currently provided by the Llanishen Sail Centre, leading to a fundamental loss of coherence and convenience in the way that activities take place"*<sup>251</sup>.

319. The appellant stressed the undoubted attractions of the Cosmeston Country Park in support of their proposal. In terms of character and scale of the rural setting and the areas of nature conservation, they are entirely different. The experience of sailing within those surroundings or walking around the Park is not in any sense comparable to that that might be provided by the appeal proposals.

320. In conclusion, on these matters of open space, there is a balance to be struck but none of the claimed benefits, either individually or cumulatively, can outweigh the loss of strategic open space and the character of that space. There may be a diminution of interest in terms of wildlife, there would be the loss of a centre of excellence for the sport of sailing and a very damaging loss of openness in the heart of the river valley that is particularly identified for the city-wide importance of its open and undeveloped character.

#### *Housing need and pdl*

321. The site is not and never has been allocated for housing development in any development plan or draft development plan. There is available to the Minister an up-to-date assessment of housing land availability<sup>252</sup> for the City as at 1st April 2007, compliant with the relevant advice of TAN1 and PPW para 9.2.3. This demonstrates that there is an identified 7.9 years supply (8,844 units) based on

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<sup>250</sup> Doc CD 102 paragraph 10.45 – 10.52

<sup>251</sup> Ditto para 10.52.

<sup>252</sup> CCC8 dated May 2008

the annual average requirement over the Plan period. That statistic was not in dispute at the inquiry. This suggests, aside from the other compelling objections to these proposals, that there is no compelling need for the allocation of a valued open space site such as this. Nor is the need for further affordable housing so compelling as to overcome these objections to the development of the site. The previous Inspector's underlying reasoning on these matters remains sound<sup>253</sup>.

322. The previous Inspector made a clear finding that the site did not constitute pdl for the purposes of PPW Fig 2.1 p.24. He concluded: "...viewed as a whole, the reservoir land has blended into the landscape and can reasonably be considered part of the natural surroundings. The fencing recently erected on the reservoir embankment does not change my view on this. Neither does the assertion that the water in the reservoir may be drained down in any event alter my conclusion on the matter"<sup>254</sup>. No compelling reasons have been advanced from departing from those conclusions in the context of the current appeal and the prospect of a temporary drain down in any event. The previous Inspector further concluded that the nature interest of the site as a whole could also justify the conclusion that the site was not pdl<sup>255</sup>. Even if that is now not accepted, that does not mean that redevelopment would be inevitable given the text of Note 1 to PPW Fig. 2.1<sup>256</sup> and the other compelling objections to the appeal proposals.

323. The mix of the proposals included both family housing for which there is a general need as well as a substantial flatted component (56%). There is no compelling or overriding need for these proposals in terms of housing policy to put in the balance in favour of the proposals.

### *Conclusions*

324. The river valleys are precious to the character of this capital city. They are a key element of local distinctiveness and character. They are given particular recognition and protection via the open space policies of both the structure and local plan for these reasons. There is no reason to believe that such protection will not remain a key tenet of urban planning policy in the years to come, whether in the Local Development Plans or otherwise. These are tried and tested principles of long standing identified by men of vision, such as Ewart Parkinson, who laid the foundations for the sound town planning of the area. They are now being tested against both the might and will power of the appellant and have not been found wanting.

325. The loss of a substantial tract of open land at the heart of the Nant Fawr valley where it is sufficiently wide to lend a semi-rural character to the area and thus provide a green lung for those living nearby is not a sustainable or acceptable option, whatever the benefits in terms of public accessibility or wildlife protection. It is a price too high; it is a price that is unacceptable in principle since urban

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<sup>253</sup> Doc CD 102 paras 10.73 – 10.76

<sup>254</sup> Doc. CD 102 para 10.19

<sup>255</sup> Ditto para 10.20 to 10.21.

<sup>256</sup> Ditto para 10.23.

development in terms of dense modern housing is inimical to the character and function of these open river valleys.

326. The proposals bring advantages in terms of wildlife protection, public accessibility and connectivity, recreation and education. None without cost and some, such as the protection of the Embankments SSSI, as refinements of pre-existing controls. Some come at a cost to similar objectives; there is the loss of the reservoir SINC, the increased human pressure on wildlife and the dismemberment of a recognised centre of excellence for sailing. But the greatest cost is the permanent loss of a substantial tract at the core of the open space corridor. That loss is on such an unacceptable scale that there is no need to dwell on the fine tuning of the balance of advantage. The proposals are unacceptable in principle to the commitment to preserving and enhancing the qualities of Cardiff as a city.

327. Much was made by the appellant on the need to find a way forward for this site and the harm being caused to its many attributes as a result of their deliberate neglect of the site and their expelling from its environs the members of the public who had enjoyed limited access to its facilities since the days that their rates paid for its construction. The appellant seeks to ridicule the ambitions of RAG to turn it into a country park. When those matters are considered, the decision maker should not be tempted by the 'final solution' approach. The appellant's commercial ambitions for the site are not of long standing and would need to be tempered to the status and qualities of the site. The system is not here to reward those who deliberately neglect their sites, deliberately provoke the public by the erection of ugly exclusionary fences and barriers, those who under the cloak of Health and Safety refuse to receive even volunteer assistance to improve the situation for the wildlife of the site.

328. The Council looks to the decision maker to take a longer term view. The US investors in the appellant company may come and may go, but the open semi-rural quality of the river valley corridor and the Nant Fawr meadows and the contribution they make to the structure of the City and the life of those who live around and have access to them should be protected for the longer term good of all. The Council has a substantial budget for recreation<sup>257</sup> and capital programmes. It has no present programme to make a country park here and it might be unwise for it to do so, given the appellant's present ambitions for its future. But when the dust has settled, the opportunity could arise. There is no special procedure. A country park is no different from any other park created or held under the Public Health Acts. It requires no particular facilities, bus parks or the like. There is significant hope for the future of this part of the corridor without the interventions of the sort of development proposed in this appeal.

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<sup>257</sup> Ewart Parkinson referred to a CCC recreational budget of £38m and a capital programme of £112m.

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## **The Case for the Reservoirs Action Group (RAG)**

The main points of the case are as follows:

329. RAG was motivated to appear at the inquiry due to the large scale and deep seated local opposition to the housing element of the proposal and the desire to keeping the Nant Fawr corridor clear from development. Membership runs to over 2000 members covering a wide area. Before the enclosure by fencing, the public had open access to the embankments for walking and fishing. That amenity has been deleted through exclusion, but could be recovered. There are sound planning reasons why this development would be in conflict with development plan policy. The site forms part of the Nant Fawr corridor which is recognised as a pivotal element in the City's structure<sup>258</sup>. It is not a single space with one use, but one of varying widths, influences and uses creating a continuous corridor. Paragraph 3.12 of the SPG<sup>259</sup> that encourages the greater usage of amenity land to a wider community, does not detract from this. Although it is clear that the proposal does offer some of benefits, and in a number of ways is an improvement on that which was before the previous Inspector, it is submitted that in all the circumstances these are not sufficient that the application should be decided in a way contrary to the development plan. In addition it remains the case that traffic Option C is not acceptable, both because of its late introduction into the planning application and because its traffic impact.

330. As to the proposed drain down of the reservoir, previous RAI reports have not called for such action and thus, RAG shares the Council's view that this may not be inevitable in the absence of a change in its use<sup>260</sup>.

### *The previous appeal decision*

331. There has been a significant amount of case law developed around the question of what approach an inspector must take to a decision of one of his colleagues in relation to the same site. This was considered in North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137 where Mann LJ said at page 145:

*"One important reason why previous decisions are capable of being material is that like cases should be treated in a like manner so there is consistency in the appellate process. Consistency is self-evidently important both to developers and development control authorities. But it is also important for the purpose of public confidence in the operation of the development control system. I do not suggest that it must be wrong to do so, that like cases must be treated alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but therefore doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.*

*To state that like cases should be treated alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is*

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<sup>258</sup> Doc CD 23 para 3.11

<sup>259</sup> ditto

<sup>260</sup> RAG 28 Ewart Parkinson's statement pg 20

*distinguishable then it will usually lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case? The areas for possible agreement or disagreement cannot be defined but they would include an interpretation of policies aesthetic judgments and assessment of need. Where there is a disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."*

332. It has not been suggested by the appellant that the previous Inspector's decision is not a material consideration: clearly this is in all material respects the same site as was being considered on the last occasion<sup>261</sup> and although there may have been some encroachment of scrub, and there is a further fence, there has been no significant change in the site itself. Neither has there been any material change in the surrounding area.

333. Where the previous Inspector made findings in relation to the site itself, in particular findings about its strategic and policy significance, RAG suggests that the same findings be found again. Those same findings are identified below and relate to the site and not the particular design put forward on the last occasion. Where there are areas where the previous Inspector's conclusions may be said to have changed, RAG seeks to explain either why the new design remains inconsistent with planning policy, or identify where it is no longer contended, that there is a conflict.

334. Of course the design of the proposal has changed as set out in the appellant's planning evidence<sup>262</sup>.

#### *Fall-back position*

335. It is of course correct that it is necessary to have regard to the 'fall back' position, meaning what can and will be done if this proposal does not receive planning permission. The appellants identify two positions<sup>263</sup>: 'do nothing' and 'drain down'. As to the second, RAG shares the views expressed by the Council that the drain down operation would be development within the meaning of the Act and require planning permission.

336. As to the 'do nothing' scenario, the previous Inspector reported:

*"First even if the present scheme is refused planning permission, this does not preclude the possibility of a different proposal (whether the current 'scheme 4' before the Council or some other scheme), which would fall to be judged on its own merits, being pursued (para 10.91) and at paragraph 10.92 " Although the appellant rejects any possibility of alternative scenarios for the future utilisation of the site in a way which would enhance its contribution to the Nant Fawr open space*

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261 There has been some change in the 'red line' from the application before the previous inspector to encompass the new alignment of the road through the meadows.

262 ID 22 para 4.19

263 ID 22 para 7.47

*corridor, this stance is unsurprising while the prospect of obtaining consent for the current scheme remains....”.*

337. RAG maintains that the position is exactly the same now. While the possibility of gaining planning consent for the current scheme remains, it is inevitable that those promoting the scheme would reject any alternative future for the site. This was amply demonstrated by the appellant’s ecology witness when asked about the possibility of the Friends of Nant Fawr being permitted to come unto the site in order to carry out the kind of work they have been carrying out in the rest of the Nant Fawr corridor. (as shown in the DVD<sup>264</sup> provided by Graham Good) It was stated that they would not be permitted to do so for health and safety reasons even though there was no need for the Friends to be anywhere near the reservoir itself. It is submitted that in reality do nothing whatsoever is not a realistic fallback position.

#### *Previously developed land*

338. RAG submits that it is wholly clear that this site is not to be regarded as pdl. The definition of pdl is provided by Planning Policy Wales figure 2.1. The previous Inspector reached a clear conclusion in this regard and stated:

*“Given the nature of the reservoir as an impounding area formed by an encircling embankment with stone pitching to its inner face, it is plain that a significant part of the site is land occupied by a permanent structure and associated fixed surface infrastructure. However, the definition of previously developed land excludes land where the remains of the structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings. In this case the grassed nature of the out-ward facing reservoir embankment slopes and the embankment tops, together with the water covering of most of the area enclosed by the embankments, leads me to conclude that, viewed as a whole, the reservoir land has blended into the landscape and can reasonably be considered part of the natural surroundings. The fencing recently erected on the reservoir embankment does not change my view on this. Neither does the assertion that the water in the reservoir may be drawn down in any event alter my conclusion on this matter”. .....<sup>265</sup>.*

339. The previous Inspector also stated:

*“The exclusion from the definition of previously developed land in PPW of land the nature conservation of which could outweigh the re-use of the site is also material in this case, given the designation of the reservoir embankments as an SSSI and the status of the reservoir area within the grassed embankment top as a SINC”<sup>266</sup>.*

*“It is also arguable that the reservoir has subsequently been put to an amenity use, in the form of the recreational sailing and canoeing activity which currently occurs. However I consider that this is fairly limited in scale and extent of activity....I therefore do not rely on this factor in forming a judgement as to whether the site constitutes previously developed land.”<sup>267</sup>*

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<sup>264</sup> Doc RAG 2

<sup>265</sup> Doc CD 102 para 10.19

<sup>266</sup> ditto para 10.20

<sup>267</sup> Ditto para 10.22

340. These views were accepted by the Minister and it is now submitted that the same views should prevail in respect of the current case. Provided there is no temporary drain down, exactly the same considerations as were before the previous Inspector apply. Even if there is to be a drain down, the previous Inspector concluded this would not cause the site to become pdl, and the previous Inspector did not have the benefit of knowing drain down would be temporary. It is submitted that a temporary drain down cannot be said to make the site into pdl.

341. Even if that view is not accepted, that the land is excluded from being previously developed by virtue of having blended into its surroundings. In the event of a temporary drain down, it is submitted that the land is excluded from being previously developed land by virtue of either the fact that the land has conservation value which could outweigh the regeneration of the site, or by virtue of the fact that the site has been put to amenity use through the sailing.

342. In relation to the issue of conservation value, the conservation value of the site itself has not changed since the previous application, the only thing that has changed is the way the site is proposed to be developed. It is arguable that a site with two SSSI designations and a patchwork of on-site and nearby SINC designations has a conservation value which outweighs redevelopment.

*Approach to the question of a country park*

343. One further preliminary issue arises that is connected with the fallback position. Both Mr Ewart Parkinson and Mr Ted Thurgood stated in their oral evidence that RAG's ultimate vision for the site is as part of a 'country park', starting from this site and eventually encompassing the whole of the Nant Fawr corridor. On this basis a number of the appellant's witnesses speculated as to whether they considered the site is appropriate for a country park.

344. It is clear that the possibility of a country park on the site is at a stage where it can be described as a 'vision'. There is no detailed design for a country park. RAG's approach has been to fight this appeal on the basis of its conflict with current planning policy, and then to turn their mind to the possibility of creating a country park on this site. There are some cases where a decision maker is invited to refuse the proposal in front of them, because there is an alternative better use proposed for the site: *Secretary of State for the Environment, Transport and the Regions v Newark and Sherwood District Council [2001] EWHC Admin 293*.

345. However this is not such a case: not because RAG in any way concedes that a country park would not be a better use of the site. It is simply because there is at present no finance for a country park, nor has any approach been made to the Council to acquire the land for this purpose. Therefore on the evidence before the inquiry, the probability of the park coming about cannot be assessed. As Mr Ewart Parkinson stated "miracles happen" and noted the City's current capital budget of £112m. In that context, the costs involved would not be significant and he gave the example of how under his tenure<sup>268</sup>, Cosmeston was transformed from a 'moonscape' former cement works into the country park which has received so much positive attention from the appellants. However while miracles can and do

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<sup>268</sup> Former Director of Environment and Planning for S. Glamorgan, including Cardiff

happen they do not satisfy the test set out in Newark above and so RAG do not invite the Minister to dismiss this appeal because the site will be turned into a country park.

346. The necessary consequence of this approach is that the appellant's witnesses' speculation on the suitability of the site for a country park, and in particular their attempts to compare the design before this inquiry with what they assert would happen in a country park<sup>269</sup>, in RAG's submission ought not assist the Minister in reaching her conclusion on the acceptability of the current design. This is not an appeal comparing the merits of this proposal with a design that has not yet been created.

### *Sailing*

347. RAG submits that the previous Inspector's conclusions in relation to sailing, with some qualification, remain true. He said:

*"I regard the longer term position that would result from the arrangements proposed as a significant diminishment in the opportunities for sailing activity available to the population of Cardiff. The new lake would, at about 6.5ha, have a far smaller area than the existing reservoir area of some 23ha. Although the guideline figures indicate that sailing can be accommodated on an area as small as 6ha, the small lake area proposed would plainly heavily restrict the number of boats able to use the water at any one time and the range of sailing activities possible simultaneously. The modest dimensions of the water area would have other effects. It would be suitable only for beginner and first level intermediate training; moreover, such training would be rendered difficult by the limited tacking distances available before a turn would be required. In addition, it is not clear how the lower water level, smaller open water area and erection of buildings close to the water would affect the suitability of wind conditions for sailing."*<sup>270</sup>

348. It is accepted that in this case there would be a reduction of a similar order in the sailing area available. There is no suggestion that the new lake would be suitable for anything other than beginners groups, or that more than one group would be able to be on the lake at any given time. As to the effect of wind-shadow in the new design, what is clear is that there would be greater massing of the higher buildings towards the edges of the lake as a necessary consequence of them being moved away from the eastern boundary of the site. There would be buildings in both an easterly and southerly direction from the lake, with the reservoir barriers being to the north and south. Therefore there is an unknowable effect from wind-shadow, with no expert evidence produced to allay this concern. The last sentence of the quotation above must therefore remain true.

349. RAG also submits that it also remains correct that as the previous Inspector concluded *"the smaller area of water available and erection of housing development close along virtually the entire east and west shores of the lake would seriously inhibit its attractiveness to prospective users and the quality of experience and*

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<sup>269</sup> For example Mr Denney suggested in examination in chief that the western path is to be considered acceptable because he asserted that any country park would necessarily have to contain such a park.

<sup>270</sup> Doc CD 102 para 10.49 -10.52

*enjoyment likely to be derived by participants*<sup>271</sup>.” It is correct that in this design the houses front onto the reduced lake, and there would be a road and area of green between the road and the reduced lake. But the experience of the sailors would still be one of being in essentially an urbanised environment. Therefore the conclusions of the previous inspector hold true. In this respect analogies with Cosmeston, which is a lake set in a country park, are inapt.

350. The previous Inspector went on to consider the possibility of relocation to the Bay. RAG submits that the question of relocation to the Bay was in no way crucial to the previous Inspector’s conclusions on the point:

*“In any event, I conclude from the evidence that the outcome of the proposed development would be a serious fragmentation of the operational base of the range of activities presently provided by the Llanishen Sail Centre, leading to a fundamental loss of coherence and convenience in the way that the range of activities takes place. I consider that this would, notwithstanding the provision of a new watersports centre facility at the new lake, place at significant risk the continued well-being of the Sail Centre. In my view the proposal would diminish significantly the range, scale and quality of sailing opportunities conveniently located in relation to the city’s population, since the facilities lost would not be adequately compensated for.”*<sup>272</sup>

351. That point still holds true: it is correct that at the moment adult sailing has moved to the Bay, but it is submitted that all the evidence suggests that this is due to the resignation of the two people who ran the sail centre at Llanishen<sup>273</sup> and due to the uncertainty about whether the lease was to be renewed. What is clear from the evidence of Mr Geraint Evans is that Llanishen’s coherence as a sailing centre has existed for many years and has up until recent times been very successful<sup>274</sup>. A large measure of this success came from the coherence of the centre: Mr Evans talked about how encouraging it was as a beginner to see much more advanced people racing. Therefore, it is submitted the current situation is a ‘blip’ in the otherwise continuous and successful history of the Llanishen centre.

352. He also expressed concerns about the quality of the water in the Bay which at time requires sail training and other activities to be postponed. The Council’s warning leaflet supports this concern. He preferred to sail at Llanishen. Therefore the previous Inspector’s conclusion still holds true.

353. The appellant’s sailing witness<sup>275</sup> said that Llanishen provided a very specific type of facility mainly suited to those who wanted to race, and that different sailors would like different types of water. This is exactly RAG’s point. It is clear that Llanishen has fulfilled the role of providing a large, clean body of water with clean

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<sup>271</sup> Ditto para 10.50

<sup>272</sup> Ditto para 10.52

<sup>273</sup> Doc ID 20 appendix 4 page 10 para (i)

<sup>274</sup> The names provided by Geraint of those who have gone on to represent Wales in sailing were not challenged. The only issue raised was at what point they had to move elsewhere. It is not suggested that Llanishen itself trained people to international standard: simply that its peculiarly good conditions have been particularly effective in encouraging people to race.

<sup>275</sup> Mr Barnes

winds very well, and the number of people who have learnt to sail at Llanishen and gone on to race is a testimony of the particular qualities the water body had for encouraging racing. All of this was abundantly clear from the evidence of Mr Geraint Evans: the only person who could provide direct evidence of sailing on the water body, let alone having learnt to sail on it. There was no evidence that any of the supposedly alternative sites for sailing have these very peculiar qualities. Therefore it is submitted that the loss of the current Llanishen reservoir represents the loss of an important sailing facility.

354. Mr F Davies also highlighted the plight of the fishing club that had used the reservoir between the mid 1950 and 1998 when the lease expired. Stocking the lake ceased in 2003. Lisvane Reservoir cannot compete in terms of water quality for fish. Moreover, fly fishing involving 'back casting' cannot be easily accommodated in populated areas, although other forms of fishing might be possible at the new lake, subject to suitable management.

#### *Non-compliance with the Development Plan*

355. The proposal does not comply with the applicable development plan, and that there are no material considerations which are sufficient to say that permission should be granted. RAG shares the Council's views in this regard.

356. The first question must be whether this proposal is in accordance with the development plan. In addition there is the Deposit UDP (now withdrawn) on which it is submitted that some weight can be placed. The previous Inspector correctly identified the most important policies: it is to be noted that the planning context has not significantly changed since the last inquiry.

357. RAG has focussed on SP policies B4 and LP policy 7 because it is clear that the proposals cannot be seen as compatible with these policies. The appellant's planning witness<sup>276</sup> confirmed that policy B4 and policy 7 were not to be regarded as superseded or out of date. Mr Ewart Parkinson gave the inquiry the benefit of his long and substantial involvement in planning at Cardiff to show how these policies fit in with a long-term scheme for the protection of the river valleys in Cardiff. His map<sup>277</sup> shows the relationship between the green corridors and the abutting urban areas. They define communities and provide access to beauty, tranquillity, recreation and wildlife pursuits. He also talked about RAG's aspirations for the future protection of the river valleys as green wedges in future local development plans, where this recognition of the corridor's importance would be maintained.

358. It is absolutely plain that the appeal proposals are in conflict with SP policy B4. The previous Inspector was clear that policy B4 was applicable, and the appellants have not sought to argue otherwise. This is an area which is important for amenity, recreation and nature conservation as found by the previous Inspector.<sup>278</sup> The wording of the policy is quite plain 'development will not be

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<sup>276</sup> Mr Waldren

<sup>277</sup> Doc ID 28 appendix map 4

<sup>278</sup> This cannot have been a conclusion based on the extent of the sailing activity before him at the time: in relation to PDL he said of the extent of the sailing activity (paragraph 10.22) "it is also arguable that the

permitted, except on those sites identified for development by other development plan policies'. The appellant has not sought to suggest that the site is identified for development by such policies.

359. The appellant's answer to the plain wording of the policy was that the policy should not preclude beneficial development. It is a matter for the Minister to decide what is beneficial development, but it is submitted that the proposal is not that. In any event, it is submitted that there is no need to read any such additional qualification into the policy, given that it does not appear on the plain and clear wording of the policy. The policy itself only applies to areas which are important in open space terms. It is perfectly rational that development on such areas should be forbidden unless identified as such in development plans. It is not the case that the existence of the policy prevents beneficial development, because it is always open to a decision maker to decide under section 38 (6) that material considerations weigh in favour of the grant of a particular planning permission.

360. The appellant also argued that to interpret policy B4 in accordance with its plain wording, would put it in conflict with LP policy 7. RAG submits that there is no conflict between the policies (and if there is such a conflict the most recent: the structure plan, being highest up the 'hierarchy' of adoption, should prevail). The previous Inspector's recommendations are plainly still relevant. The previous Inspector reported:

*"It is plain that the proposed housing development with associated new access roads would give rise to the loss of a significant part of the open space comprised within the appeal site. The land is in private ownership and for the most part has no public access. Nonetheless it is of considerable amenity because of its pivotal role within the Nant Fawr open space corridor and its contribution to its physical and visual quality and integrity, which is appreciated from adjacent publicly accessible areas and from adjoining residential areas."<sup>279</sup>*

361. It is important to note that this was the previous Inspector's base-line assessment, where he was drawing conclusions about the role of the site in the Nant Fawr corridor in light of the requirements of LP policy 7, not specifically about the effects of development. There has been no significant change in the site and no significant change in the Nant Fawr corridor since. The same analysis and conclusions should be adopted. In particular, the crossing of the meadow by the eastern access to the site, remains in conflict with these policies for the reasons set out by the previous Inspector:

*"In addition, the open space qualities of the section of the Nant Fawr Meadows between Nant Fawr Woodland and Rhyd-y-penau Woodland, which are clearly enjoyed by many who use it for informal recreation and by occupants of the properties which overlook it would be seriously diminished by the proposed access road across the Meadows to the proposed residential development and the attendant traffic. Although landscape planting could be provided, I consider that this element of the proposed development would plainly be harmful to the coherence and integrity of this publicly accessible open space. It would reduce its particular qualities as informal amenity open space possessing a tranquil and*

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reservoir had subsequently been put to an amenity use, in the form of the recreational sailing and canoeing activity which currently occurs. However I consider that this is fairly limited in scale and extent of activity."

<sup>279</sup> Doc CD 102 para 10.66

*almost rural character and fringing the much larger open space of Llanishen Reservoir.*<sup>280</sup>

362. RAG acknowledges that there are some changes in the present scheme: the road would sit better into the Meadow. On traffic Options B and C, there would be reduced vehicular movement through the meadows. However there is no option which would not create traffic movement through the meadows, affecting its wild flowers noted in the ES as being diverse semi-improved grassland used by grass snakes and with a high level of community involvement and as part of a continuous link between the urban area and the countryside<sup>281</sup>. It is to be noted that this would not be like Keeper's Cottage Lane, where there is a narrow track, bounded on both sides by high hedges, which was used infrequently<sup>282</sup>, as recognised in the last inquiry report<sup>283</sup>. In all Options, there would be a road made up to modern standards with varying levels of vehicular movement. Lighting columns and traffic would be visually and aurally intrusive and crossing points would interrupt physical movements. Severance of the meadows would result. It is submitted this is plainly going to "reduce [the Meadow's] particular qualities as informal amenity open space possessing a tranquil and almost rural character..". Arguments that this is equivalent to roads which cross commons do not assist this inquiry: a road crossing a very large common is a different proposition to a road passing through a relatively small meadow<sup>284</sup>.

363. RAG submits that it is abundantly clear that SPG cannot be used to reinterpret Structure and Local Plans. The previous Inspector's interpretation, agreeing with that put before the inquiry by the Council and by Ewart Parkinson on behalf of RAG must be correct. Therefore Mr Ewart Parkinson's evidence is absolutely on all fours with the conclusions of the previous Inspector<sup>285</sup> in relation to the strategic importance of the Nant Fawr open space corridor and the other river corridors, and should be accepted. The previous Inspector emphasised "*the open space corridor has long been recognised as one of four open space corridors which penetrate the urban form of the city and provide an important resource of strategic significance*". This conclusion is reflected in the explanatory text to the identified policies and in the new SPG.

*Benefits alleged to outweigh non-compliance with the Development Plan:*

*(i) Affordable housing:*

364. The provision of houses, and in particular the affordable housing, is plainly a benefit of the scheme, as it was before the previous Inspector. The question of the extent to which the Council can fulfil their housing requirement is dealt with separately by the Council in their evidence. It is accepted that there is an

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<sup>280</sup> Doc CD 102 para 10.38

<sup>281</sup> Doc CD 97 page 177 para 9.5.12

<sup>282</sup> Mr G Good's evidence

<sup>283</sup> Doc CD 102 para 10.38

<sup>284</sup> Mr B Denney

<sup>285</sup> Doc CD 102 paras 10.35 – 10.36

increasing drive towards the provision of affordable housing, but not such a fundamental shift as to imply that planning permission should now be granted contrary to the development plan. In particular, it is submitted that the Minister's speech<sup>286</sup> does not provide evidence of such a fundamental shift in policy: at best it simply illustrates the aspiration to greater affordable housing provision set out above.

(ii) *Watersports*

365. The provision of new facilities would provide some benefit, as proposed to the previous Inspector. However, given that only beginners' sailing would take place at Llanishen, it is questionable how important facilities designed to promote a club belonging would developed. In any event, on-site facilities are not required for such an association, as Geraint Evans described in his oral evidence: " *the users going to a pub in order to discuss the response to the application*".

366. The simple point in relation to sailing is that it is the quality of the water that is of key importance and not the quality of the facilities. Any suggestion that people are 'voting with their feet' by moving to the Bay is simply not borne out by the evidence. It simply reflects the Council's very recent operational priorities which have arisen for the reasons already set out. Similarly suggestions that the new lake would be a 'safer more inviting environment' are not borne out. The evidence from Mr Geraint Evans (the only person who has sailed at Llanishen who gave evidence) did not suggest an intimidating environment for beginners. If Llanishen was unsafe for sailing, it would not have been allowed to continue there: no evidence was produced before this inquiry of accidents or problems arising from sailing at Llanishen.

(iii) *Accessibility*

367. The opening up of the site for public access would be of some benefit, as was the case in respect of the last application. However, the public access that provided would be into an environment where in respect of most routes through, one would be aware of the presence of houses. In that sense, it would be into an environment experienced as urban or semi-urban. The analogy with Cosmeston, which is a country park in the true sense, is again inapt. The proposed routes along the western side of the site where one would not be aware of the presence of houses, would be sandwiched between the reservoir bund and the planting at the edge of the site. It would be difficult to view either the Nant Fawr (which is partially culverted<sup>287</sup> here in any event), or the SSSI on the reservoir bunds. It is submitted it would not be the pleasant riverside walk as it is painted<sup>288</sup>.

368. A further benefit of opening up of the site is said to be the linking of the communities of Lisvane, Llanishen and Cyncoed. Although linking of communities is frequently a good thing, it is not the case that at the moment it is impossible to get between the different communities. There is no evidence that any community lacks particular facilities which would benefit from being 'linked up'. While it would be a

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<sup>286</sup> Doc ID 23 appendix 4

<sup>287</sup> Doc CD 96 ES para 5.1.26

<sup>288</sup> Ditto para 8.6.43

good thing to link the communities at either side of Roath Park, that does not mean that one would want to build a road through Roath Park. The same point, applies here: building a road through the corridor undermines the very reasons identified in policy why the corridor is of strategic importance.

369. The appellant argued that opening up of the site 'completes' the Nant Fawr corridor. This cannot be correct: the corridor is already complete. It is possible to walk from Roath Park to the country through fields. The paths on the site would simply give one alternative option for walking which would take walkers through a semi-urban environment and which would not link up to the paths to the north of the site, without users travelling along Lisvane Road. This would undermine being able to walk from the centre to the countryside on fields alone.

#### *Traffic and the effect on Lisvane*

370. For reasons set out earlier, RAG maintains that Option C should not be entertained as part of the current application. In any event, the evidence provided in respect of Option C did not show that it would not have a significant impact on the traffic network in Lisvane. This is already a crowded part of the highway network in Cardiff, used as 'rat run'. The appellant's highway witness<sup>289</sup> put forward a Paramics model to demonstrate that the impact on the highways network would be limited. However, Mr Ron Kelly stated that this model was created based on data gathered when the network was behaving atypically due to roadworks. Models such as Paramics are only as good as their input data: as stated in the Local Model Validation Report at 1.3 "the accuracy of forecast model is directly related to the accuracy of the base model".

371. Additionally, in Mr Kelly's professional opinion combined with his local knowledge, the Paramics model did not draw data from a wide enough area to show the totality of the effect of Option C on the local highway network. In particular, simply taking information from the Lisvane Road/Church Road roundabout was not sufficient - information should also be taken from junctions north on Church Road particularly including Llwynypia Road/ Heol y Delyn, because these are already used as a 'rat-run'. The increase in traffic associated with the site would exacerbate the problem. This is the sort of important local knowledge which, along with the effect of roadworks on the highways network, should properly have been fed into a reliable Paramics model.

372. Therefore RAG maintains that the Paramics model does not serve to undermine the evidence about the congestion on the network and the likely effect of the additional journeys. Although the appellant hopes that there will be a modal shift to bus use to counteract the increase in congestion, this is already an area which experiences high congestion and low bus use. There is no reason, other than aspiration, to conclude that an increase in that congestion will cause any modal shift.

373. Additionally, in order to implement the scheme agreed between the Highway Authority and the appellants to avoid (as they see it) the need for a ghost

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<sup>289</sup> Mr Axon

island at the northern exit of the site on Option C, it would be necessary to introduce a large number of traffic calming measures onto Lisvane Road.

### *Conclusion*

374. Planning Policy Wales states:

*"4.1.8 When determining planning applications local planning authorities [and by extension those deciding on or making recommendations on an appeal] must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting a planning permission; objections, or support, must be based on valid planning considerations."*

375. This is a case where there has been a long and sustained campaign against the appellant's plans for redevelopment of the site. However, that long campaign has always pointed to sound and important planning considerations, which mean that redevelopment of this site for this large scale housing scheme remains inappropriate. In addition, RAG presented evidence that traffic Option C and its late introduction are inappropriate. The scheme remains unacceptable in terms of all access options, but in the case of Option C, there is the additional problem of the inappropriateness of that route in traffic terms.

376. The changes since the last inquiry and previous decision are in RAG's submission not sufficient to overcome the policy objections to redevelopment of the site in this way. The appeal should be rejected.

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### **Other interested parties or persons appearing the inquiry**

377. Ms J R Magill of Bridge Cottage, Lisvane Road opposite the lane leading to the allotments and existing sailing centre and speaking and writing<sup>290</sup> on behalf of her neighbours: objects to Option B and C because of a net increase in the risks of death or injury. The residents of the houses opposite the junction would interfere with gaining safe access and egress from the existing driveways with restricted visibility. It is not a simple T junction, but one that involves other roads and access points from which and into which residents manoeuvre cars. This can involve using the width of the road in order to reverse into driveways in the face of fast moving traffic. The increase from a handful of cars using the existing access on a daily basis to over 1600 traffic movements (based upon the appellant's evidence) would represent a substantial increase in risk to residents both as pedestrians and drivers. That estimate of traffic movements is significantly under-estimated. Despite the appellant's view the Option C route would be less convenient for car drivers, it unrealistically assumes that a transfer from cars to buses. Normal traffic generation ratios of 8-10 vehicles per day per household would suggest almost 3000 movements per day. Traffic calming would not help local residents use their driveways more safely.

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<sup>290</sup> Within Doc ID 7

378. Such an approach would also discriminate under the Age and Disability legislation against those who rely upon private cars. The appellant has not had regard to the socio-economic characteristics of this part of north Cardiff that includes high proportions of older people and fewer children.

379. Existing poor visibility due to walls and hedges and the road's alignments requires complex manoeuvres to gain access into the driveways opposite the lane's junction with Lisvane Road. No traffic calming is proposed in Option B, yet there would be an increase of more than 400 traffic movements per day (based upon 25% usage). The traffic calming measures proposed in Option C would not offset the increase in danger. The appellant's highway evidence was 85% of the traffic would respond to the measures by a reduction in speed to around 25mph. Yet 15% of the significantly increased volume of traffic would exceed this speed and conflict with residents every time they seek to use their driveways.

380. Many learn to avoid any reduction in speed when passing speed humps. Moreover, traffic seeking to turn into or from the lane and the site would be caught up into the queues of cars negotiating the priority slows, especially at peak times. This would make manoeuvres into residents' driveway still more dangerous.

381. The proposed changes in Option C would harm the semi-rural character of the area by urbanising it and resulting in the loss of trees and under-storey along the land and at the junction.

382. Mr David Evans<sup>291</sup> of 79 South Rise, appeared in his own right; he is not a member of RAG and stated that he never held wholesale opposition to the various schemes. The appellant has put forward some imaginative proposals that should not be dismissed without proper consideration. As a former County Engineer and now as an arbitrator, the competing objectives should be capable of conciliation. Nevertheless, although accepting that the appellant acted in good faith and noting the HSE published advice on fencing acting as a deterrent close to urban populations<sup>292</sup> and recognising that the effects of unchecked vandalism could be catastrophic if the embankment's stone pitching continues to be disturbed and fires are started<sup>293</sup>, the reasons for erecting the costly fencing around the reservoir appear inconsistent with the approach in respect of Lisvane. Its physical characteristics present greater risks. Whilst it is noted that the proposal is for on-site wardens in a similar way as at Cosmeston, that location is more attractive in terms of shape, vegetation and bird life and there are no houses close-by. Comparisons with Cardiff Bay where houses may be regarded as attractive<sup>294</sup> are misplaced.

383. Despite the appellant's and Dwr Cymru's view, the loss of a water reservoir appears short sighted in the light of climate change.

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<sup>291</sup> Statement at Doc TP1

<sup>292</sup> Doc CD 245 section 5

<sup>293</sup> Doc CD 305

<sup>294</sup> Doc 263 photographs

384. The appeal site is remote from the communities of Llanishen and Cyncoed: walking to them would be difficult from the old and infirm and also parents with children. Any transport facility (rail station, bus stops) more than 400 metres away is too remote to attract commuters from their cars. The appellant's commendable efforts to secure public transport cannot guarantee the anticipated modal shift. The existing bus services on Lisvane Road rely heavily on subsidised bus pass income. Moreover, the lack of bus lanes on the main radial route influences bus patronage as does the pattern of commuter travel across the City, rather than into the City centre. Likewise, the appellant's expectations<sup>295</sup> that cycling would create a vital part of the route through the site to the City centre, is not reflected in the use of existing facilities.

385. Being enclosed by the reservoir embankments, the proposed housing area would not be an attractive environment. The proposed Lisvane junction (Option C) would be vastly inferior with substandard visibility and at a pinch point to the allotments requiring signal control, to the access off the existing Cyncoed roundabout. Visibility of 33 metres may be adequate at 20mph, but motorists often exceed speed limits.

386. Traffic flows along Lisvane Road would increase by over 30% from an existing congested situation and in the absence of wider policies for improving highway capacity to meet increasing demand<sup>296</sup>.

387. Reference has been made to the width of the Nant Fawr green lung corridor, the maximum width of which is about 250 metres near to Waterloo Gardens. The maximum width of the reservoir is about 800 metres. Thus there is room for compromise which could involve building on the meadows that are largely used for dog walking and blackberry picking. That would provide funds to acquire the reservoir as a country park in public ownership. Similarly, as explored previously and noted in the ES<sup>297</sup>, land between South Rise and the reservoir could become housing land also adjacent to existing housing communities. A green lung of about 600 metres would be retained, as would the SSSIs, the sailing school.

388. Mr J Cooper of 5 Tummel Close<sup>298</sup>, a retired transportation planner stated he shared others' views relating to the conflict with planning policy, the impact upon the corridor and nature conservation and recreational interests. In addition, the highway arrangements would be unacceptable.

389. Option C is so poor that it should not be the sole access, nor should it take 25% of the traffic as in Option B. Features that render this part of Lisvane Road inappropriate to cope with additional traffic include: (i) the proximity of the bridge and parapet over the Nant Fawr stream, (ii) the four other road access points within 100 metres, (iii) the restricted forward visibility at the railway station bridge, (iv) the sub-standard junctions with Station Road and Fidas Road and (v) the inadequate capacity to deal with the existing movements.

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<sup>295</sup> Doc CD 97 ES para 10.5.05

<sup>296</sup> Doc 96 ES vol 1 para 10.6.10+

<sup>297</sup> Doc CD 97 figures 4.3-4.5

<sup>298</sup> Doc TP 2

390. In all Options, the appellant's assessment of traffic levels (fettered demand) under-estimate the likely outcome. In Option C, the development would add 25% to the flows along Lisvane Road and in Option B by 6.25%. The junction with Lisvane Road would also be sub-standard for large vehicles and for regular buses, difficult situations would be created especially when two meet. Because of the configuration, approaching buses or large vehicles would not see each other until after manoeuvres had been started. Swept path diagrams<sup>299</sup> for two very large vehicles reveal that the space needed for simultaneous competing movements would exceed the space within the proposed highway and junction. This is relevant to all three access Options.

391. As to alignment of the northern access road, the route would only be just wide enough for approaching buses to pass if travelling on parallel tracks<sup>300</sup>. It would not be possible to ensure that drivers manoeuvre their buses to fit snugly into the passing lay-by. Furthermore, variations in the road width along the route's length should be avoided. All Options would include a pinch-point between the stream and the allotments, to be controlled by traffic signals. Such an arrangement would be acceptable in Option A (just bus use), but not with 25% and 100% other traffic usage (options B and C), where opposing large vehicles might have to reverse. Further, in Option B (25/75% private/public traffic), those residing in the northern part of the proposed development would have no choice but to leave the site via Lisvane and would suffer from the same operational difficulties as would arise with Option C.

392. Turning to the south-east access, any route would require agreement with the Council, as landowner, to cross the meadows. There can be no certainty that such agreement would be forthcoming and thus a Grampian type condition would be inappropriate.

393. Central to the objection is the assessment of the traffic generated and the effects on the network. The TRICS trip rates used in the ES relied upon those for apartments that include inner city blocks of tenement flats, some with no parking and occupied by low income residents with low car ownership. This type of development differs significantly from that which is now proposed. As the site is poorly located for pedestrians and residential parking would be provided, it is wrong to apply a low trip generation rate. As a consequence, peak hour flow would be 30% higher than suggested.

394. Moreover, the ES calculations are based on 'unfettered demand' which means that traffic generation would be higher but for traffic congestion, the presence of public transport and the availability of a bus season ticket. This however, is unrealistic as these factors exist and would affect drivers' progress through the network and the expected modal shifts being relied upon. Further, travel in car/van accounts for 10 times as much travel as by bus<sup>301</sup>. Whilst the proposed two season tickets would be welcomed they would only apply to about 8% of the total bus and car driver trips made by the proposed households and

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<sup>299</sup> Doc TP 2 appendix B green lines are the limits of the proposed junction

<sup>300</sup> Buses are 2.48m wide plus wing mirrors; passing place is 5.5m wide.

<sup>301</sup> Doc TR 2 appendix C table 3.9 of Regional Transport Plan.

would make little difference to the overall traffic generated by the development. Likewise the travel plan included for Option C<sup>302</sup> would be difficult to deliver and relies upon major employers that would be unlikely to be served by this development and which are, in any case, on the limit of 30 minutes walking time. Thus this is not a well located site in this regard and residents would continue to rely on private car transport.

395. Also, the accident record at the Rhyd-y-penau cross-roads is already unsatisfactory and would be aggravated. The ES and TIA<sup>303</sup> for Option C claim that congestion would not be significant. However, the development would increase costs across the network of £393,000pa, because in non free-flow traffic situations, each individual car joining queues would impose additional costs on all other vehicles. The WebTag guidance is normally used to evaluate transport projects, but the principles are equally applicable<sup>304</sup>. The appellant agreed that the characteristics of Lisvane Road are different from Cyncoed Road and that Fidlus Road can be congested at peak times causing inconvenience. The appellant's preference for Option C on the basis that it would encourage non-car borne forms of transport by being less convenient to car drivers, is thus misplaced. Therefore the analysis throws into serious doubt the conclusions reached in the appellant's Paramics model.

396. The site is poorly located for walking. Whilst the proposed scheme for subsidized buses is welcomed, the frequency of buses (2 /hour off-peak and 4 / hour during the peak) would be poorer than other parts of the City. Moreover they would use congested routes. Thus this factor would not outweigh the identified harm by encouraging the intended modal shift<sup>305</sup>. Moreover, walking to the rail station would be at least 12 minutes from the northern parts of the site and contributions towards improved strategic cycle routes is only proposed in Option C. Being a hilly area and with the lack of dedicated safe routes, cycling growth cannot be relied upon. In reality, other than the Cyncoed shopping area, due to distances from major facilities and community services which lie beyond the 400 metre isochrome<sup>306</sup> recommended in the IHT guidelines<sup>307</sup>, most residents would drive rather than public transport. The appellant agreed that Option A would be far more convenient to residents.

397. Mr Cress of 8 Crofta, Lisvane Road objected to the consideration of Option C and to the manner in which it had been proposed. The scheme would ruin the natural wildlife corridor running in from Lisvane Road and passing the stream and woodland. The proposed rumble strips to be included in the traffic calming measures would create noise. Footways along Lisvane Road are not continuous: additional pedestrian traffic would be dangerous.

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<sup>302</sup> Doc CD 164A appendix B page 10

<sup>303</sup> Docs. 96 ES paras 10.6.022, 10.7.4; CD 164A para 5.43

<sup>304</sup> See TP2 statement page 18 cf for details

<sup>305</sup> Doc ID 24 para 4.27

<sup>306</sup> Doc CD 307

<sup>307</sup> Doc CD 164A table 2 page 7

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398. Mr Hanson of 5 Hillcot expressed concern about the sweep path of buses and the potential for them to queue before passing through the narrow section past the allotments. Concern was also expressed about construction traffic likely to be generated.

### **Written Representations**

399. The written representations are organised under a number of headings. Those submitted from organisations and individuals before and in accordance with the instructions and timetable set at the PIM in March 2008 are reported first [Docs. ID 5 & 5A]. Then those received during the inquiry and up to the deadline of 1<sup>st</sup> July 2008 announced during the inquiry [Doc. ID 7]. In addition, letters were sent to the Council during their consideration of the application and which accompanied the appeal questionnaire and consultation responses.

#### Organisations:

400. Countryside Council for Wales (CCW): By letter of 19 May 2008, CCW referred to and enclosed copies of their previous correspondence of 14 June, 4 July, 14 September and 22 November 2006, 10 April 2007 and 10 April 2008. CCW note that the Lisvane reservoir SSSI has been managed and maintained through a Section 39 agreement under the Wildlife and Countryside Act 1981 between CCW and WPD since 2004. That agreement could be terminated through a satisfactory planning obligation, about which discussions have continued throughout the planning and inquiry process seeking long-term assurances over the management of the land by an appropriately skilled body to prevent adverse impacts on the SSSI. Further assurances have been sought that appropriate measures would be in place before construction works commence to ensure that the proposed earth movements would not affect the stability of the SSSI. These concerns and those originally raised for the Lisvane reservoirs SSSI and the Llanishen and Lisvane Embankments SSSI could be addressed by the implementation of comprehensive, specific and enforceable planning conditions and/or agreements. Provided these are in place, CCW's concerns including those relating to the crossing of embankment SSSI by the access road and resulting in a loss of 0.55% of its extent and to protected wildlife species, would be addressed.

401. Environment Agency Wales (EAW): By letter of 13 May 2008 relating to the revised ES dated April 2008 and revised Transport Assessment dated May 2008, EAW referred to and enclosed copies of their previous correspondence dated 18 July 2006 and 13 April 2007. The July 2007 letter confirms that the full retention without modification of the reservoir embankment ensures that the development is situated outside the 0.5% and 0.1% flood outlines. Through the imposition of conditions, the site could be designed to lie wholly outside the extreme flood limits. From a flood risk perspective, there are no adverse comments. Further conditions could deal with land drainage matters, potential land contamination, environmental management and bio-diversity, together with off-site improvements to the Nant Fawr watercourse and corridor.

402. Ramblers Association – Cardiff Group: By letter of 10 April 2008, Ms Diane Davies of 9 Cyncoed Rise, Cardiff objected on behalf of the Group. The Nant Fawr corridor is an important place for local people to walk and includes the reservoir walk of 5km that passes up the corridor passed the meadows. Such recreational

pursuits are promoted by local planning policy. The proposal creates the danger of destroying both the present natural habitat of the area and spoiling the areas encroaching upon it, especially the impact upon the SSSI. The injection of people into this environment would also have a detrimental impact upon over-wintering fowl at Lisvane reservoir. The construction of the access road would cross and interrupt the existing footpaths and desire lines.

403. Field in Trust (formerly National Playing Field Assoc): By email dated 10 April 2008, the Trust stated that normally they would welcome privately owned recreational land being handed over to and managed by the Wildlife Trust. Whilst the proposal argues that approximately 8.5ha of such land would become publicly available, Local Plan policy 7 makes no distinction between open space in public or private ownership. Thus the proposal would reduce the amount of open space available from 10.5ha to 8.5ha. The Council's SPG entitled 'Open Space' shows a deficiency of 7.78ha in the Llanishen ward. Thus the proposal conflicts with the Development Plan and paragraph 11.1.9 of PPW.

404. Lisvane Craig Protection Society: by letter dated 14 April 2008, Mr M. Dean (Chairman) objected to the proposal because of its visual impact. The area is used for walking, horse riding and mountain biking by members who enjoy the open expanse of water. This would change. Despite the creation of new footpaths, the access road would sever the Nant Fawr footpath and pose a danger to its users. The predictions relating to wildlife, fail to recognise the detrimental impact of a large number of new residents and their off spring and pets. The restricted access under the present arrangements has contributed to the diversity of current wildlife. The proposed barriers to restrict traffic passing through the site will be ineffective and will be vandalised, all adding to congestion.

405. Cardiff Outdoor Group (affiliated to YHA): by email dated 14 April 2008, the Group objects to the proposal because the reservoir comprises part of a green wedge that links Roath Park with the countryside to the north of Cardiff. It is of high conservation value, the loss of which would not be mitigated by the provision of nature reserve.

#### Elected Representatives:

406. Julie Morgan MP: By letters dated 9 April and 6 May 2008 reported constituents' concerns about the consideration of Option C and the impact upon traffic congestion. The proposal fails to sensitively address the SSSI and other wildlife issues. It impacts upon the Nant Fawr corridor and removes one of the City's 'green lungs', and also impedes residents' enjoyment of the area for recreation.

407. Jenny Willott MP: By letter dated 8 April 2008 strongly objects to the proposal: the preservation of the reservoir is of central importance to Cardiff and its residents. There is very strong public feeling against the proposal. The reservoir and surrounding land is not identified for housing, neither is there any urgent need for extra sites. The sailing club's facilities would be drastically reduced: there are no locally comparable facilities.

408. Jenny Randerson AM: By letter dated 19 March 2008 stated that the amendments proposed to ES (of April 2008) would be so fundamental as to form a new application and should not form part of the appeal. In the letter to the Council

dated 23 May 2006, it is stated that the proposed development would have severe repercussions for both the natural and residential environments. The only significant difference from the scheme rejected in August 2007 is the abandonment of the plans to build on the eastern embankment, although the embankment would still be breached in two places to gain access. The retention of the green wedges and river corridors running northwards from the City centre is a unique feature, whose erosion would signal a green light to further development proposals. The current proposal and the numbers of new residents will adversely impact upon the Lisvane SSSI and over-wintering fowl and the newly designated Llanishen SSSI. Llanishen reservoir is an oasis in an urban environment that offers unparalleled features that attract both wildlife and sporting activities, including angling and sailing. The water quality in Cardiff Bay does not compare favourably with that of Llanishen. It seems ludicrous to reduce the area of water at a time when global warming brings threats of water shortages. In south-east England consideration is being given to desalination plants: in Wales rather than destroy reservoirs, more should be constructed. Traffic congestion will result.

409. Councillor Kate Lloyd MBE JP: Expresses strong support for resisting development that would affect the Nant Fawr corridor of open space which comprises part of the green lung stretching from the open countryside north of the site down through Roath Park and the City Centre, the ecology of the area, the SSSI status and the sailing club. Concern also expressed about whether the over-booked Rhyd-y-penau Primary School could cope with additional demand. Also local roads are congested with Fidlas Road having reached capacity. Nothing has changed since the last appeal. Moreover, Option C should not be considered at the Inquiry.

410. Councillor Anne Gee: Objects to the consideration of Option C as not having been dealt with through the normal process of consultation and consideration. Further questions why the County Council had not turned away the planning application itself, having been the subject of a previous appeal and refusal by the Minister in August 2007.

Other third parties [Docs. 5 & 5a, 7 & on appeal file]

411. Third party representations received prior to the Inquiry opening (approximately 280 letters) mostly reflect and support the views and aspirations expressed by RAG and generally raise concerns about the loss of the much valued public amenity of the reservoir to future generations through development. It provides a haven of tranquillity and provides opportunities for walking, fishing, sailing and nature watching and forms part of the strategic network of open space in the City. The previous appeal decision should not be reversed. One letter suggests that the lowering of the embankment bund around the reservoir would have a major impact upon the aesthetics of the skyline.

412. If approved, there would be a precedent for further erosion of green spaces to the north. The land should be treated as green belt. The site should be bought by public subscription as public open space or as a country park and designated a conservation area. Paragraphs 8 of the Minister's decision letter of August 2007 and paragraphs 10.35, 10.36 and 10.56 remain pertinent: the proposal would destroy the quality, integrity and coherence of the Nant Fawr open space corridor. The proposed access road crossing the meadows would still damage its qualities.

413. There is no need for additional housing; traffic congestion would result: the suggested traffic generation is unrealistically low; it is false to say that people will use buses instead of their cars. Problems already exist along Rhyd-y-penau Road.

414. The appellants have damaged the environment by enclosing the reservoir with a metal palisade fence to prevent public access. The former Keeper's Cottage which lies on the route of the proposed access road, burnt down in 2006 by unidentified vandals and remains rubble. The pump house building in the north-east corner was also demolished and left as rubble.

415. Reservoirs should be retained due to possible drought and climate change. Its loss would be short-sighted. This reservoir should be protected because of its great archaeological interest. Damage to the SSSIs would also result: one letter suggests that 10% of the SSSI would be lost. The proposed benefits to the natural environmental and bio-diversity are unlikely. Whilst it is desirable that the reservoir site should be open to public access, a permanent population of wardens, educators and children and pets are far more likely to drive away the bird and animal life than to encourage it.

416. Sailing would be disrupted and the training facility eroded, resulting in 'dirty or flukey' wind that affects the stability of sail boats. Letters report their personal experiences of enjoying the sailing facility as a resource where their children have learnt to sail. The reduced water area would be an inadequate substitute.

417. Allotment holders would be disturbed during the construction phases and result in greater unauthorised access to the allotment gardens.

418. Following the opening of the Inquiry and my invitation to submit any comments about the proposed Option C by 1 July 2008, approximately 156 additional objection letters were received, plus two petitions. The objections reiterate the concerns expressed by RAG and the points made orally at the Inquiry. The consistent themes relate to the late amendments to the scheme to include Option C and objection to it being considered in the absence of full consultation. Also, the unsuitability of Lisvane Road to accommodate the proposed additional traffic, both in terms of the road's semi-rural character and traffic congestion that feeds back on to side roads. Lisvane Road is sinuous and narrow in places with restricted forward visibility and numerous safety warning signs and road markings. It acts as a 'rat-run' for through traffic going to retail parks, the Bupa Hospital and the M4. It is already heavily trafficked and especially congested during peak hours. It not only serves housing, but also a number of schools and nursing homes. Given that footways are not continuous, the additional traffic would endanger pedestrians. The need for the proposed traffic calming measures illustrates its unsuitability and will only serve to aggravate the existing unacceptable conditions.

419. Letters also draw attention to the 'village green' appeal heard early in 2008, the favourable result of which could result in there being only one way into the proposed development with the route across Nant Fawr meadows being prevented.

## Conditions and Planning Obligations

420. The appellant has executed a S.106 planning obligation (Unilateral Undertaking) dated 29 August 2008<sup>308</sup> which would take effect in the event of planning permission being granted and implemented for the development now proposed. Its clause 4 (c) also makes the Undertaking dependent upon the acquisition of any land necessary to carry out the development. Such procedures would be conducted under other legislation and measures and need not affect the consideration of the planning merits of the proposal. The draft Unilateral Undertaking was examined during the Inquiry by the Council, RAG and CCW and comments where appropriate have been taken into account. The Council and CCW have confirmed their satisfaction with the final Undertaking, other than matters relating to liability insurance of the reservoir that were raised shortly before the Inquiry closing<sup>309</sup>. A new clause (schedule 6 (2.3)) now satisfies the Council in respect of the problems relating to the lease for the sailing club raised in correspondence<sup>310</sup>. In response, the appellant noted that the Council had not been able to source specialist advice in this regard. Furthermore, matters of insurance were for the landowner and not the Council, but even if it were relevant, the RAI's expert evidence assured the Inquiry that adequate provision had been included<sup>311</sup>. Moreover, that expert evidence indicated that with the reduction in the water levels, risks would be negligible with a very low likelihood of failure. Therefore there was no reason to conclude that inadequate provision had been included in the package agreed with the Trust.

421. In summary, the Undertaking provides<sup>312</sup>:

- for a minimum of 30% of affordable housing within the development in accordance with more detailed provisions concerning its timing, type, distribution and mix;
- for the approval of details of the precise location of habitat areas, children's play areas, the wetland habitat and recreational land, the watersports centre, the wildlife centre, the car park, the access roads and access areas on the recreational land;
- for the submission of a scheme and plans for the Council's approval detailing public access to the grassland embankments, Lisvane reservoir, the new Llanishen water lake, the children's play areas, the retained habitat and wetland habitat in accordance with the Lisvane Management Plan and Llanishen Management Plan; together with details of the charitable or other body who will be responsible for the areas' management and with whom agreement must be entered into prior to development commencing and to whom £4.5m would be paid;

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<sup>308</sup> Doc ID9

<sup>309</sup> Doc CCC21 – email relating to insurance; CD 317

<sup>310</sup> Filed email dated 22.8.08 between Mr Geoff Shimell and Mr Charles Felgate

<sup>311</sup> Report paragraphs 68 -69

<sup>312</sup> Doc CD 306 summary of S106 and other contributions

- for traffic calming and management works in Lisvane Road in the event of Option C being approved;
- for the up-grading of Keeper's Cottage Lane and car park;
- for the bus ticketing scheme in agreement with the Cardiff Bus Company over a period of 15 years;
- for off-site formal and informal open space contributions and towards the implementation of the Nant Fawr Improvements;
- for education contributions;
- for a temporary sailing relocation sum

422. I return to the appropriateness of the contributions later.

423. During the Inquiry, consideration was also given to the planning conditions that should be imposed in the event of planning permission being granted. Discussions took place between the Council, RAG, CCW, the appellants and others at the Inquiry and various alterations were made to the draft list<sup>313</sup>. I comment about their appropriateness later.

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<sup>313</sup> Doc CCC 18

## **Inspector's Conclusions**

424. These conclusions are based on the evidence given at the Inquiry and the written statements as summarised above, the written representations, and the findings of my site inspections. Numbers in brackets [ ] refer to the paragraph numbers in this report. Attention is drawn to CD 281 that provides a useful illustration of the site proposals.

### **Preliminary matters**

425. A number of preliminary matters should be addressed before setting out my conclusions upon the appeal's planning merits:

#### The amended application

426. As noted [10, 14 -18] at the PIM, notice was given that the submitted planning application would be amended to include a further 2 highway access options based upon the inclusion of an additional access via Lisvane Road as alternatives to the original proposal for access to be from the Cyncoed / Rhyd-y-pennau Roads roundabout. Submissions were made by the Council and by RAG, and others in writing [408-10, 418], that such amendments should not be accepted and that the only scheme to be put to the Minister should be the original access arrangement. For reasons given above [17], I indicated that all 3 access Options should be considered and reported to the Minister.

427. In my view, having regard to the extent of public consultation that has taken place both before and during the Inquiry [18] the tests set out in *Wheatcroft v SoS* and elsewhere have been satisfied and the three access Options should be considered as alternative elements of the application proposal. I therefore recommend that the Minister considers all three access Options and comes to a determination as to whether all three would be acceptable or whether one or more would not be acceptable.

#### Human Rights issues

428. As noted [85-90] submissions were made and countered regarding the claimed interference with the Human Rights of third parties. Such considerations must form part of the overall balancing exercise when coming to judgements as to whether or not to grant planning permission.

#### The Reservoirs Act 1975: the Reservoir Inspector's report

429. This Report is of importance given its statutory status and the fact that its recommendations are enforced through the Environment Agency [60]. Whilst the Council has made adverse comments about its introduction to the Inquiry at a late stage [279], opportunity was afforded to all parties through the attendance of the RAI to ask questions and to explore its content. In my view, adequate opportunity was given to establish the basis upon which the Report should be considered. I conclude that the Report is therefore pertinent to the consideration of the proposal.

430. Evidence was adduced that explained why its commissioning had been advanced as relating to the potential for a change in the future ownership of the reservoir [61,64,103]. Although the Report is phrased as referring to the future change

of use of the reservoir and the Council questioned the meaning of this [287], the RAI emphasised that his recommendations were based upon his professional concern for the physical state of the pipework running through the embankments and reservoir bed [64]. He stated that it did not matter who the future users would be or the future use: his recommendations would be the same. As to questions raised concerning the basis upon which the author reached his conclusions [286], given the nature of the continuous pipework system that runs from Llanishen downstream into Cardiff, I do not consider it unreasonable to rely to some degree upon the on-site reservoir engineer's experience [65]. I consider that the RAI's oral evidence was convincing and having considered the Report, I find no reason to doubt his stance.

431. Further, I find no convincing evidence to lead to conclude that there would be any alternative to the recommended draining of the reservoir. Possible alternatives were explored in evidence and through cross examination, none of which were considered by the RAI to be capable of satisfying his concerns as to the continued safety of the reservoir and its infrastructure [66].

432. Turning now to the submissions made regarding the drain down operation [71-81] and the possible need for planning permission and as a consequence, the possibility of an Environmental Assessment. Whether planning permission and any consequential procedures would be required is a matter of law. As stated by the Council and RAG [81] in terms of the need for an ES, it is a matter of fact and degree. However, the latter would not be engaged in the absence of any need for planning permission to drain down the existing reservoir.

433. The Council and RAG submitted that the process could be regarded as an 'engineering or other operation' under Section 55 of the Act [72]. In this case, the process of draining down the reservoir would involve opening and controlling sluices and valves in the system. I do not regard this as being analogous to the tipping of soil to raise land or the marking out of an area with marker posts [73]. The physical turning of a control wheel or valve is materially different to those operations. Whilst the process of drain down would be supervised by an engineer, this would be as a requirement of Health and Safety regulations and of the Reservoirs Act [69], but in my view, that does not align with the definitions under the Planning Acts for 'engineering or other operation' to require supervision by an engineer involved with setting out, measurements and construction methods [72,82].

434. As to the insertion of piezometers within the embankment to measure its stability during the drain down process, the oral evidence made clear that this would not be necessary [67,71,83,284]. Whilst the ES made reference to this work, I find no compelling evidence for me to doubt the expert evidence given by the RAI in this regard.

435. I therefore draw the conclusion that there would not be a need for planning permission for the process of draining the reservoir for maintenance purposes. It follows that the visual impact of the emptied space for a period of time, which could raise issues of whether this was to be regarded as EIA development, does not arise. Should any remedial maintenance works required as a result of the subsequent inspection of the reservoir's bed amount to engineering or other operations, consideration at that juncture would need to be given to whether planning permission would be required and whether other procedures would be engaged.

436. I therefore conclude that the reservoir will need to be drained down in accordance with the statutory inspection report within a period of 12 months or at the latest within 3 years [64]. The Council accepts that the burden of evidence is that it is more than likely that this would occur [288]. This position is significantly different from that which existed at the last appeal, when the possible intention to drain down the reservoir was asserted but was not based upon any technical or professional evidence. The implications in terms of the Landlord and Tenant Act 1954 [279] are again a matter of law to be determined in the first instance by the County Court in the absence of agreement [285].

#### The previous appeal decision

437. In August 2007, having received the Inspector's report, the Minister dismissed an appeal and refused planning permission for development at the appeal site<sup>314</sup>. That report and decision are material considerations in the determination of the current appeal proposal. Where circumstances have not changed, their findings remain relevant and should not be departed from without justification [331 - 333]. Where circumstances have changed, including matters of detail either individually or cumulatively, those changes should be weighed in the balance and may lead to a different conclusion as to the planning merits of the proposal.

#### **Main considerations**

438. I consider that the main consideration in this case are as follows:

- (i) the implications of the proposals for the quality, integrity and coherence of this part of the Nant Fawr open space corridor having regard to the prevailing development plan and other relevant planning policies;
- (ii) the implications of the proposals for sailing and sail training facilities;
- (iii) the implications of the proposals for the Llanishen reservoir and related SINC's;
- (iv) the implications of the proposed access Options to serve the development.

#### Consideration (i) : Open space considerations

439. Photographs of the appeal site and of the Nant Fawr meadows are included in the ES (volume 2 section 8) and in the Design Statement<sup>315</sup>. These give a realistic representation of the area. As was recognised in the last appeal decision and which is not disputed in this appeal, the reservoir forms part of the Nant Fawr open space corridor which extends from Roath northwards to the open countryside beyond the built up limits of Cardiff. The corridor has long been recognised as an important open area and one of the four open space corridors that penetrate the

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<sup>314</sup> Doc CD 101 / 102

<sup>315</sup> Docs CD97 and ID15 appendix 10)

urban form of the City. These define communities and provide access to beauty, tranquillity, recreation and wildlife pursuits [28,294,297,357]. The Nant Fawr corridor and the meadows along the eastern side of the reservoir are especially appreciated by residents [293-5,325-9,357,402-5], although as noted in the Inspector's report relating to the application for Village Green status, unlike the corridor as whole which is of strategic importance, users of the meadows are mostly locally based [58,100,115].

440. There is common ground that the development plan policies, its explanatory text and the associated supplementary planning guidance have not altered since the last appeal decision and that LP policy 7 and SP policy B4 are the key development plan policies to guide the determination of this appeal [293,356]. The wording of SP policy B4 entitled 'Greening of urban areas' appears more onerous than LP policy 7 and states that development will not be permitted except on those sites identified for development by other development plan policies [124,299,357]. The Nant Fawr corridor is not so identified and thus a conflict with this policy is suggested by the Council and RAG [299,358].

441. However, this does not amount to a policy stance that is analogous to a green belt / wedge notation that imposes a presumption against development [123,149,150,154,307-8,408,412]. Nor does it prevent the consideration of non-allocated, windfall sites [308]. Moreover, given its strategic nature, I consider that the policy wording cannot prohibit development that would be beneficial to the policy's primary objective of 'protecting, conserving and enhancing open spaces which are important for amenity, recreation and/or nature conservation' [124]. Furthermore, as the SP and LP were produced and adopted within a close time-frame, it seems illogical to conclude that SP policy B4 is intended to be more onerous in its consequences than LP policy 7 [126]. Further there is no statement that the two plans are not in general conformity with one another [127].

442. LP policy 7 does not prohibit all development within the Nant Fawr corridor, but rather requires that satisfactory compensatory open space is provided [122,296]. The LP's paragraph 3.3.9 explains that generally this should be in terms of quantity and quality and be located within an appropriate distance to serve the relevant catchment population affected by the loss. It notes however, that in some cases a like for like replacement may not be the most appropriate course to follow [122].

443. It was common ground that the objectives of LP policy 7 and SP policy B4 both seek to protect important open spaces and should be approached in the same way [128, 307,360]. It is also agreed that they are relevant to the space comprising the reservoir: this follows conclusions reached at the last appeal that the reservoir should be so regarded<sup>316</sup>. I find no reason to disagree. I also draw no material distinction from the SPG as to the difference between amenity open space and recreational open space [134,297]. Further, I find no compelling basis for concluding that compensatory open space must be new land, rather than existing open land to which public access would become available. (155d)

444. Therefore my preliminary conclusion is that depending upon the quantity and quality of the compensatory measures, development in this location need not

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<sup>316</sup> Doc CD 102 para 10.18

conflict with the development plan. If it does, material considerations would then be weighed in the balance.

445. In assessing the compensatory measures, attention must first be given to the characteristics of the area and to the open space that would be lost. The Nant Fawr corridor is given especial attention in the justification of these policies [297,358] where its role as part of the strategic form of the City is noted. The Open Space SPG builds upon the LP policy 7 highlighting the linkages provided by the corridors between the central urban areas of the City and the countryside. It notes that proposals that would cause unacceptable harm to the integrity of these areas would be rejected [299]. It sets out, however, guidance as to how impacts should be assessed, with particular note being made to the levels of significant visual access and the contribution made to the surrounding area and to the leisure amenity value of open space [130].

446. Although the reservoir lies within the corridor of open space and forms part of the overall open space feature that also includes the Nant Fawr meadows, I consider the reservoir itself does not define the Nant Fawr corridor's character or function. Rather than rely upon the cartographical representation of the corridor on the Ordnance Survey, I consider that greater weight should be given to the area's changing character and function [149].

447. It is noted that the Council's putative reason for refusal makes this distinction by referring to 'this part of the corridor' [12, reason 1]. Whilst in combination with the wider open space and nature conservation features it contributes to the overall openness, the reservoir is a visual and functional entity within it, to which the public, unlike the meadows that were acquired for public benefit, have no rights of access. In my view it does not perform a pivotal role in the corridor [306]. Not only is the water area fenced to prevent public access having regard to the health and safety implications, but the topography and physical elements create a visual and physical division. I place little weight upon arguments that imply that the fencing was erected to encourage this conclusion [327,414]. It seems to me that there were sound issues of public liability that drove such action [104].

448. Furthermore, the rising embankments and undergrowth provide substantial screening along the eastern side that obstructs most short views by walkers using the footpath that runs north-south through the meadows. As stated at the Inquiry, I observed the site both during the summer and in the New Year when vegetation was sparse and I consider that the photographs included in the ES represent an accurate depiction of the situation. Even in winter, wide open views of the reservoir are not possible from close quarters. Glimpses of parts of the reservoir's water surface would, however, be possible from the upper floor windows of the distant houses along Black Oak Road [135], but as these are not public views, this attracts little weight.

449. Nevertheless, there are clear views over the reservoir from the viewing platform at its northern end, close to where the proposed wetland would be located. However, this involves a short diversion from the pathway and thus the effect upon the character and appearance of the meadows and the wider corridor is very limited. Likewise, from the Lisvane reservoir to the north, there are views over the Llanishen reservoir, but again as public access to this area is also

restricted, the visual contribution to the meadows and the wider corridor is limited. From the western side of the reservoir, close views are obstructed by vegetation of differences in height, with longer views only possible once the general topography rises to the west. I conclude therefore that the existing reservoir has little visual relationship with the open space of the meadows that, due to the presence of the prominent houses along Black Oak Road, could be described as 'semi-rural' at best in appearance.

450. Turning therefore to how the proposal would affect this position, it was agreed that it differs in a number of respects from that previously considered. The appellant's Design Statement provides a comprehensive representation of the proposal<sup>317</sup>. Fundamentally, the development would be kept within the bowl of the embankments, with the exceptions of the access road Options. Given that the proposed levels of the reservoir's shoulders upon which the housing would be built would be about 8.2 metres below the top of the embankments [33], coupled with the linear park along its eastern side [39,119], it was agreed that the housing development would not be seen from the Nant Fawr meadows [117,136,301,306,362]. From the first floors of the elevated houses in Black Oak Road, there could be glimpses through the vegetation at least in the short term of housing on the western side of the development. But this would be at a considerable distance and being from private vantage points should be afforded little weight [138]. Nor would the road along the southern edge of the new lake which would be set below the level of the embankment be openly visible [137].

451. I conclude therefore that the proposed built development would be largely unseen from the meadows within a very short period of time. Because of the topography and proposed levels, it would not rely upon screen planting that would take some 10-15 years to mature [138]. Although views of the new built development would be possible beyond the wetlands from Lisvane reservoir, the visual impact of the development upon the open character of the Nant Fawr corridor as a whole would be minimal[305]. I conclude that this is a significant difference from the previous appeal proposal, which concluded that the housing would visually impinge upon views from within the meadows and thus harm its character and that of the corridor.

452. The Council's stance that people using the Nant Fawr corridor would 'know that the housing is there' does not represent significant harm to the character and appearance of the meadows [137]. Similarly, there is no compelling evidence to conclude that activity associated with a housing area would impinge upon the tranquillity of the meadows, any more than already results from the existing houses along Black Oak Road [301].

453. Therefore although when combined with the embankments and surrounding wooded slopes, the reservoir represents a significant feature of considerable interest, I consider that the space enclosed by the embankments in isolation has a lesser positive impact on the character and appearance of the meadows and the wider corridor, than the open meadows and woodlands which the public can enjoy for a variety of ways.

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<sup>317</sup> Doc ID 15 appendix 10 separately bound

454. Nevertheless, the development would involve the creation of an access road across one part of the meadows [41-45]. This part is approximately 1 hectare in size and represents a distinct land parcel. In assessing the impact, I first comment upon the wider corridor [149]. The Nant Fawr corridor does not display a single uniform character and may be described as a series of rooms contained by physical features. Within those rooms, different uses are found, such as the formal and less formal recreational activities at the Roath Park end, to the informal walking areas to the north. My inspection of these components revealed that it is not possible to walk from the City centre to the countryside without being obstructed or interrupted by road crossings [369]. Thus long views are generally restricted by substantial vegetation, major road crossings as found to the north of Roath Park, the topography such as when walking northwards between the woodlands and Rhyd-y-penau Road and by small access roads such as Keeper's Cottage Lane that passes from Rhyd-y-penau Road to the southeast corner of the Llanishen reservoir.

455. The alignment of the proposed access route is materially different from the last appeal proposal, although the starting and finishing points on either side of the meadows is approximately the same. Similarly, it would still affect the wild flowers and semi-improved grassland in the meadow along its path. However, whereas previously the road would have involved cutting and filling and would have adopted a line over the highest parts of the land, the current proposal would be located closer to the copse and follow the folds in the natural topography. Although the width and detailed treatment of the proposed access road and its lighting would differ between the three highway Options being considered, the general alignment would be the same. Having regard to these elements, it was agreed that the proposed road would sit better in the meadow[140,362].

456. However, it is clear that anyone using this part of the Meadows would be aware of the access road in any of its configurations. The proposed detailed treatment of the associated footways with the options of low mounding on either side, the various lighting options ranging from low bollards<sup>318</sup> to street lights would affect this perception, but would not prevent on-lookers being aware of the road. Moreover, those perceptions would be affected to varying degrees by the volumes of traffic that would use the access road, with the least effect being achieved in Option C and the greatest by Option A.

457. Nevertheless, I consider that those perceptions should be assessed in the context of the harm to the function and character of the corridor, rather than only in a localised manner. In this context, I note that it is now evident that the actual use of the meadows is by those in the locality rather than by those living in the adjoining communities [146,254]. Although the proposed access road would be seen from houses at the southern end of Cyncoed and Black Oak Roads, from most other aspects, it would be seen against the backcloth of the woodland copse that marks the northern end of the 1 hectare Meadow. The visual impact of any of the access Options would be contained, not only to this 1 hectare part of the meadows, but still further to the northern part of it<sup>319</sup>. Likewise any impact upon the Meadow's tranquillity would be very localised and limited. I see no particular benefit in

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<sup>318</sup> Diagram Doc CD 284

<sup>319</sup> Doc ID15 appendix 11 Option A photos of street lights rather than bollard lights

requiring the footway/cycleway to be diverted to Keeper's Cottage Lane, although there would be marginally less of the Meadow lost in Option A2 on Figure SCG30A<sup>320</sup>. The proposed measures to also reduce the prominence of the street lighting as shown on Figure SCG33A would be beneficial, as would the proposed low mounds on either side of the carriageway. I conclude that this represents a significant change from the previous scheme and that these treatments would help mitigate any visual harm.

458. As to the impact upon the free movement of walkers and pets, passage along the Meadow's footpath through this 1 hectare parcel is already interrupted by Keeper's Cottage Lane that marks its south-western boundary [147]. Here users pass through a kissing gate and have to take pets (and children) under control<sup>321</sup>. Similar measures are proposed in the scheme to facilitate passage and I find no compelling reason to conclude that this would represent such a significant obstacle as to harm the function of either this 1 hectare parcel or of the wider corridor. Similarly, the visual impact of any fencing at the crossing point would be seen against the existing vegetation and would not be visually intrusive.

459. With regard to other severing consequences of the access road, I consider that the visual impact and consequentially the perception of severance would be significantly less than would have been the case in the last appeal scheme. Moreover, I consider that this aspect should also be balanced with the pedestrian, cycle, bus and car linkages that would result from the proposed development [109,368]. Although the Open Space SPG makes clear, in relation to the four river corridors, that important open space need not be in public ownership or be publicly accessible, this does not mean that where public access can be provided, it does not represent a public benefit [302]. The scheme would include a variety of pathways and cycle tracks within and around the built development that would be permeable and accessible to the general public as well as the road access, but these links would also extend to Lisvane [146,251]. Similar elements were proposed in the last appeal scheme and were not sufficient to outweigh the identified harm. However, given that the identified harm is now of lesser magnitude, I regard these linkages as a significant benefit.

460. The arrangements would strengthen the cross-corridor links that exist further to the south and enable residents from both sides of the reservoir to make use of facilities in the adjoining, but separated communities. Some residents considered that this would be of benefit, while others did not, it being suggested that there are adequate existing linkages and there is no evidence of a need to link the communities [290,368]. However, I do not consider that the analogy of a road crossing Roath Park is apt, given the location of that facility closer to the City's central area and the availability of 'crossing roads' immediately to its north and south. People wishing to pass from the Lisvane area to the Cyncoed area must, other than travelling a long way to the north, use the Rhyd-y-penau Road and Fidlas Road route. In my view, the reservoir acts as an impediment to people seeking to use the meadows when approached from the west, or the facilities in the

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<sup>320</sup> Doc 269A SOCG paras 1.18-20

<sup>321</sup> Doc CD97 appendix 8 photo 8.10

Lisvane area for people living in Cyncoed. This evidence of the physical separation was not previously available in the last appeal to weigh in the balance [145-6].

461. Furthermore, in terms of the recreational function of the Nant Fawr corridor and of the meadows in particular, there would be greater opportunities for the general public to engage in the water based activities being promoted in the scheme than the existing situation [107-9,143,155d]. (I return to sailing matters later). The disagreement between the Council and the appellant focuses upon the quality of the compensatory open space, rather than its quantity [155]. In this regard the proposed linear park, whilst being different from the wild flower meadows, would nevertheless provide passive recreational opportunities for all sectors of society. It would complement the enjoyment of the meadows by providing a more accessible, easier safer walk. Likewise the provision of formal and informal open spaces within the development would encourage access and participation, in contrast to the limited access currently available. The wildlife centre and wetlands, coupled with the educational facilities provided, would also attract people into the area from both sides of the existing reservoir and support the nature conservation interests.

462. Whereas in the previous scheme the enjoyment of these areas and especially that of the lake, would have been adversely affected by the presence of new housing hard up against the open space or backing on to the lake and thus attracted little support from the Inspector, the approach now proposed is more integrated and sensitive. In particular, the likely views from the lake would be of a lakeshore, beaches and broadwalks with housing set back from the edge, which in my assessment would present an attractive environment in which to participate in water based activities [36-9, 107-11, 118-9]. Likewise, the arrangement of walks through the housing areas linking the linear park with the meadows and the lakeside would create very attractive and accessible areas. Equally, the footpaths along the western boundary of the appeal site, which would not be narrow and enclosed as previously proposed, would create an attractive route for walkers from Lisvane [119, 367].

463. I conclude therefore that in terms of the amenity and recreational functions of the Nant Fawr corridor, the proposal would help reduce the levels of severance experienced between the communities on either side by positively promoting public access to hitherto necessarily restricted areas of open space.

464. With regard to nature conservation and the role of the Nant Fawr corridor, unlike the previous appeal scheme, there are now no objections raised by CCW in respect of the SSSIs, subject to the imposition of suitable conditions and the implementation of the S.106 planning obligation [116,400]. It is also evident that the arrangements for the transfer of the management to the NFEET coupled with the substantial funds for both the construction of the wildlife centre, its management and that of the SSSIs, including the Lisvane reservoir are, as acknowledged by the Council, significant benefits that would flow from the development [309-310].

465. I comment upon matters relating to the reservoir SINC later, but conclude here that the establishment of a suitable management regime coupled with its funding for some 25 years, represents a positive contribution to nature conservation. In the absence of development, there is no evidence of any alternative mechanism that could stem the current degradation of the nature conservation interests [104,110,141,155e,249,309,]. In addition, the creation of an area of

wetlands and reedbeds that would make a large contribution to the bio-diversity targets of the area and which offers the potential through the wetland centre to educate and enthuse people, represents a valuable benefit [110,244,312].

466. However, some harm to the appearance of this part of the meadows would result from creation and use of the proposed access road, albeit minimal in my assessment. Against this needs to be balanced the benefits arising from integrating the reservoir site into the open space corridor as set out above. In terms of compensation measures, I have concluded that any additional open space provision need not represent new land. Equally useful, in my view, is the bringing into public use land that has hitherto not been openly available to the public. Moreover it is appropriate to have regard to the improvements in the quality recreational and amenity facilities provided by the proposal and assured in perpetuity through the S.106 planning obligation [155,421]. In my view both in quantitative and quality terms and whether or not amenity space is regarded differently from recreational open space [134, 298], these benefits would outweigh any harm to this part of the meadows resulting from the proposed access road.

467. Given that the proposed built development would have a localised effect almost exclusively contained within the bowl of the embankment and not harming the character or appearance of the meadows or the wider Nant Fawr corridor, I conclude in respect of this main consideration that the coherence and integrity of these important open space features would not be materially harmed. Although the access road would create some interruption to the free flow of pedestrians along the meadow footpath and would be visible within an enclosed part of the meadows and affect its ambience to a small degree, this would be seen within the context of the nearby houses and woodland copse. Any harm would be outweighed by the benefits resulting from the development in terms of improved linkages and public accessibility to the amenity and facilities to be provided. Moreover, these benefits would outweigh the loss of the open space amenity currently provided by the reservoir both in terms of quality and quantity of the open space and other features provided.

468. I find no compelling evidence that any other development visions would produce such benefits, which even if possible would still necessitate improving public access across the meadows to the reservoir site with the attendant consequences in terms of impact [246-248; 335-337, 343-346].

469. I therefore conclude that the proposal would not diminish the level of public amenity afforded by this part of the Nant Fawr meadows and that these aspects of the proposal would satisfy the second test required by LP policy 7 (and as a consequence SP policy B4) and thus it would accord with the development plan.

#### Consideration (ii) : the implications for sailing and sail training

470. Following the last Inquiry [158-159], the Minister concluded that on the basis of the evidence presented, the proposal would result in a significant diminution of the existing opportunities for sailing and sail training, but also recognised that its future at the site was uncertain. The previous Inspector had commented upon the concerns relating to the proposed lake's size, the relationship with the adjoining houses and its general ambience [347]. It is noted that this was in the context of the Council accepting that the then proposed section 106 Planning Obligation would

have satisfied their concerns<sup>322</sup>. However, third parties disagreed and presented evidence of the proposal's anticipated effects.

471. On this occasion, the matter has been researched more fully and evidence produced in support of the appellant's, the Council's and RAG's positions. Thus there is now a greater clarity about the use of the reservoir for sailing and training, and about the future of the facility [160].

472. The putative reason for refusal has 3 main elements and refers to the wide range of the existing facilities, to the modest dimensions of the proposed facility, to the inadequate nature of the replacement facility and draws the conclusion that the development would result in a diminution of the long term opportunities.

473. It is evident that the reservoir has been popular for new sailors and for some more experienced in the activity, although competitive racing and training is undertaken elsewhere [166,176-177,331,351]. However, the long term future is now in jeopardy not least because of the need to drain down the reservoir for maintenance purposes. In view of my earlier conclusions on the impending drain down of the reservoir, at the very least the facility at Llanishen will be interrupted and will need to be relocated to Cardiff Bay for a period of time. Whether the facility would be reinstated after maintenance has been carried out, is uncertain [161-163,316].

474. The evidence now reveals that, other than for school introductory exercises which may be as many as 1050 individuals annually [197, 313], the use of the reservoir by sailors and for sail training is minimal and that no more than 25 people a week are using it for sailing [167]. Most sail training takes place at Cardiff Bay where the facilities are modern and far superior to those remaining at the reservoir. The Council confirmed that, other than capsizing training, all other Council-run activities can and do take place in the Bay. For reasons of water hygiene, due to the 20% of the year when the Bay's water quality is regarded as not being suitable, capsizing training is held at Llanishen [167-8, 196]. Despite this cautious approach, significant levels of dinghy sailing occur in the Bay [202]. Likewise, little use of the reservoir is now made for windsurfing with only 8 recorded sessions on one day last year [169, 195].

475. Although suggested, there is no compelling evidence to suggest a connection between the uncertainty arising from the tenancy issue and this decline in the use of the reservoir; rather users are making a choice to utilise better facilities despite the location being marketed by the Council [170-1,316,351]. Whilst some individuals expressed their wish to continue to sail at Llanishen because of the high water quality and the nature of the experience [353], other sailing experts commented that modern facilities are now demanded by most participants and that the success of the Bay and other centres was testimony to that fact. They expressed the view that the very basic facilities at Llanishen fail to come up to modern requirements and there was no prospect of it doing so in the future without development.

476. I find no basis for concluding that the existing facilities at the reservoir would provide could be used to promote and achieve sporting excellence in

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<sup>322</sup> Doc CD 102 para 10.43

preparation for 2012, especially in the light of the grant of only temporary planning permission for replacement portacabins on the site [162,173,317]. Furthermore it does not follow that just because the existing sailing centre has encouraged young sailors in the past who have gone on to excel, that such successes will occur in the future, especially in the context of more up-to-date facilities elsewhere in the region [177]. Thus I afford this point little weight. Moreover, the existing facilities fail to provide safe slipway access, especially for those with limited mobility [172-5,313-19,348-354,365-6].

477. From the evidence submitted and heard, I conclude that the existing Llanishen reservoir does not provide and is not used for a wide range of sail and sail training facilities.

478. With regard to the scale of the proposed replacement lake, the proposed depth of 6 metres would be more than adequate to enable capsizing training to continue [180] and deeper than comparable water bodies where sail training takes place. Moreover, although different views were expressed as to the effect of 'flukey' or unsteady wind and the effect of trees and buildings, I find no convincing evidence that conditions at the proposed facility would be unsuitable to learn the skill of righting boats and reacting to potential capsizing. Such conditions are not uncommon and need to be addressed in training [188-190,315,348].

479. The detailed design of the edge treatments would facilitate safe and easy access and egress to the water for all users and be far more suitable than the existing sloping stone sides that I observed were slippery and steep [175, 181]. Although the lake's area would be smaller, it would still represent a useful introductory sail training facility that would be less hostile to beginners [182]. Additional training, social and educational facilities would also be provided within the watersports clubhouse that would encourage a wider cross-section of participants [34,94,108,174,365]. More experienced sailors would, as now, move to the Bay to hone their skills and to race [177,200-2]. Moreover, the re-design of the housing layout that would avoid houses backing on to the lake as in the previous scheme, and coupled with the edge treatment including pocket parks, landscaping and broadwalks, would present a more attractive environment to observe from the water [111,118,349].

480. The Council and RAG maintain that the reduction from 23.8ha to 5.9ha water surface area would result in inadequate room to enable suitable instruction to occur [179-187,315,348-351]. However, having regard to these factors and to the Sports Council's guidance on areas required to accommodate sail training, which suggests a minimum area of 1-3ha, and to the sailing facilities available elsewhere, I conclude that the proposed lake of 6 hectares should not be regarded as unsuitable for continued introductory sail training by individuals and school children. Nor do I find any convincing evidence that the dimensions of the new lake would be inadequate for sail training, especially in the light of other facilities in the region [183-185].

481. Notwithstanding other private and public facilities in the sub-region [198-199,205,274], given the need to relocate the sailing centre during the drain down period, there is a strong likelihood that the Council's facilities at the Bay would be expanded. The Council confirmed that other than capsizing training, all other water based activities could be provided for there in facilities regarded as 'the jewel in the

crown' [193]. Concerns relating to the water quality of the Bay for 20% of the time and the suggestion that it is unsuitable for sailing and other activities are not supported by the evidence and also conflict with the clear popularity of its facilities [202-204, 352]. In any case, there are no reasons why taster introductory sessions of schools could not be provided at the proposed watersports centre at the new Llanishen lake [197].

482. Objections were raised about the loss of fishing opportunities at Llanishen. As these have not existed for some years, the proposed development would not result in the loss of an existing facility. However, given the nature of the lakeside treatment, I see no practical reason why such opportunities could not be re-established subject to normal management arrangements [275,354]. This would extend the range of recreational opportunities available at the location.

483. I conclude therefore that with regard to this aspect, the lake would be of sufficient size to provide sail training at an equivalent level as now exists, or better, and that the overall replacement facility which would include a clubhouse complete with normal facilities, would exceed the range of activities currently available and have the potential to widen the appeal of the recreational and leisure resource. The Council accepted that the proposed facilities would be of some value, although regarded them as 'common place'. For the reasons given, I do not share this view [314]. Therefore, I am in no doubt that the resultant water-based activities at Llanishen would represent an improvement in terms of range and quality. In addition, the proposal through the S.106 obligation would also provide for enhanced facilities in Cardiff Bay [207]. Although the Council suggests that if planning permission is refused, the existing reservoir would retain the potential to attract investment and improvements, there is no compelling evidence to suggest that this is likely to occur [317].

484. Accordingly, I conclude that the recreational and leisure provision would amount to appropriate compensatory measures that would outweigh the loss of the reservoir in its current state. Therefore the proposal would accord with LP policy 7 in this regard.

#### Consideration (iii): the implications for the Llanishen reservoir and related SINCS

485. The context for this consideration is SP policy C4 which seeks the enhancement of SINCS and policy 2.47 of the deposit draft UDP [212]. LP policy 7 also covers this interest as made clear at paragraph 3.3.8 [141]. Given the UDP's status, it can be afforded only limited weight. Nevertheless, LP policy 8 applies to SSSIs, but not to SINCS.

486. As noted above, the current proposal differs from the last appeal proposal significantly in that CCW raises no objection, subject to the imposition of planning conditions and the implementation of the S106 obligation to ensure the protection and management of the Llanishen and Lisvane Embankments SSSI [26,116]. This is because 99.45% of the SSSI would be retained and only affected by the road crossing in the north-west corner of the site. CCW are satisfied that appropriate measures could be taken to avoid material harm and that the involvement of the Nant Fawr Education and Ecology Trust would secure proper management of the conservation interests both initially and in the long term [239-240, 400].

487. I find nothing to convince me that the Council's fears about the effects of NOx emissions or changes in the local hydrology have any sound basis or that CCW have not considered all relevant matters [240,311]. Benefits would also result in terms of the Lisvane SSSI, whose condition is degrading as a result of lack of suitable management and the effects associated with its proximity to and access by the urban population [235-238]. The evidence of other SSSIs locally and elsewhere suggests that where properly managed nature conservation interests and the urban population can co-exist. I find no reason to conclude that this could not occur at Llanishen [215,247,404].

488. The Council accepts that the position is very different from the last appeal and that the current proposals offer the benefit of protection to the overwhelming majority of the appeal site and the neighbouring Lisvane SSSI and its surroundings. Only lower order impacts are now involved [309-310]. Accordingly there is no conflict with LP policy 8 relating to SSSIs.

489. The relevant ecological interest in this appeal is therefore now confined to the Llanishen reservoir itself and to its embankments and to the nature conservation interests that justify its designation as a SINC [27]. In respect of the Llanishen reservoir, these are the 3 types of pondweed and stonewort that the Council suggested are regarded as relatively rare in the UK [310], and as a breeding site for toads. However, in the light of the submitted evidence, I consider that this assessment is over-stated [221-3,228]. The Llanishen grasslands and scrub SINC supports grass snakes and glow-worms and club rush, matters that the planning officer's committee report suggested could be addressed by way of the imposition of planning conditions [217]. The Council also expressed concern about the human and animal disturbance associated with urban development that could impact upon the wider Nant Fawr corridor and the crossing of the meadows by the access road, which is an area of draft SINC status.

490. With regard to the reservoir SINC, it is now recognised that in the event of necessary drain down of the water, its high quality attributes that support the nature conservation interests would no longer stand in the way of the proposed development [213,289]. Given my earlier conclusions in this regard, I consider that this must now be regarded as a certainty.

491. Nevertheless, detailed evidence was presented that leads me to conclude that the species likely to be affected are sufficiently robust and tolerant as to survive the construction period, especially having regard to the water interception measures proposed to avoid polluted surface water run-off entering the water body and the management measures to be put in place [218-224, 274]. Even if, in a non-drain down situation, the species did not survive the development, appropriate mitigation measures could be undertaken that accorded with the Council's Bio-diversity SPG.

492. The evidence confirms that circumstances could be created to ensure the rapid 're-creation' of conditions necessary to 're-gain' the SINC status both in terms of the pondweeds and toads and other species [214,230]. This would equally apply following the drain down process and the possible loss of that status [225-240]. There would also be the potential through proper maintenance and supervision of the area to encourage over-wintering birds and re-gain that recognised interest that has been lost from the existing reservoir [232]. Improved bio-diversity conditions on

neighbouring sites can also be anticipated as a result of the positive and proactive management regime being proposed [235-243].

493. In weighing these impacts, consideration should also be given to the benefits that would result from the proposed new wetlands and reedbeds that would provide 75% of the Council's original BAP target and six times the new target [110]. Although smaller than previously proposed [312], given the rarity of this habitat [244-245] and coupled with the educational opportunities afforded to the public by the management of the area and offered by the proposed education centre, I regarded this as a significant benefit that would outweigh any minor temporary harm to nature conservation interests. In addition, the proper management of the Grassland SINC, that is now degrading, would ensue through its regular maintenance by the NFEET. Given the landowners' legal responsibilities under Health and Safety legislation, I consider that little reliance could be placed upon such work being undertaken by volunteers, outwith the control and supervision of such a trust [242-243,337]. Similarly, there is no evidence that there is a realistic prospect of such benefits being provided in the foreseeable future through the creation of a country park or through a wildlife trust in the absence of the proposed enabling development [246-249, 343-346].

494. These factors lead me to conclude that the proposal would bring about significant nature conservation benefits that outweigh any harm resulting from the development of the open space and the crossing of the meadows by the access road, notwithstanding the certainty that those recognised interests that currently exist in the reservoir would, in any case, be affected by its drain down within the next 12 months. Tests imposed relating to the grant of any licences affecting European protected species would be capable of being met [227]. Accordingly, I find no conflict with LP policy 7 or SP policy C4.

Consideration (iv) : the implications of the proposed access Options serving the development

495. The Council as Planning and Highway Authority no longer raises any objection to any of the proposed access arrangements subject to the imposition of agreed conditions and in the light of the completed S.106 Planning Obligation that would give effect to required highway improvements [40-45, 250]. These would facilitate improved accessibility through the site to serve a wide area by public transport [251-255]. Within the development, cycle ways and footpaths would also promote alternatives to use of the car. I consider that the package of transportation and highway measures proposed would make some contribution to encouraging alternative transportation modes.

496. The appellant seeks to achieve a modal shift from the use of the private motor car to using public transport. This objective reflects national policy and is to be encouraged. The provision of bus passes to households would assist in this regard, as would the linking of both sides of the Nant Fawr corridor by a new bus service that would be subsidized for a period of 15 years.

497. In order to bring this about, the three access Options seek to regulate and discourage the use of the private motor car to link with the City centre. Within these, minor adjustments could be made if considered necessary [269]. Private car access through the site would be controlled with an electronic 'bus gate' that could

be positioned to maximise its use by buses and yet enable access to the public car parks serving the education and wetlands centre in the north western corner and the play area in the south eastern corner.

498. In terms of proximity to major facilities within the City, the site is geographically well placed and regarded by the Council as 'second to none' outside the centre itself [30,97]. In broad terms I agree. However, local residents and RAG argued that even although there are bus services, many commuters and others do not travel to and from the City-centre along the radial routes, but use cross-City routes to employment, educational, shopping, recreational and social opportunities [384, 394, 396]. I have no reason to doubt this. Moreover, it is stated that even though there are cycle routes, they are not universally popular and the gradients to Lisvane and Llanishen represent an impediment [396]. Similarly, although the Lisvane rail station may be within 400 metres of the edge of the site [252], it would be a considerably longer distance from most of the proposed houses, and would involve walking up a hill along narrow and non-continuous footways. Major facilities and community services are still further away. Such a situation would not be attractive to the elderly or to parents with children, or to lone children. Thus objectors maintained that car use would continue to predominate as the chosen method of transport for existing and future residents in this locality.

499. The current proposal includes the access arrangements to the Cyncoed Road / Rhyd-y-penau Road roundabout which was considered acceptable by the Highway Authority [267] and the previous Inspector in the last appeal (Option A). This and the associated bus gate within the development site would be designed to ensure that all traffic including buses and cycles used this route to enter and exit the housing and other elements. Buses and cycles would be able to pass through the site and link with Lisvane Road along the existing, but improved access road that serves the reservoir and the allotments. Whilst there was some disagreement expressed at the Inquiry about the outcome of the traffic generation model [259,263,370,389,391], I find no compelling reason to come to a different conclusion. Likewise, although other agreements and land transfers would be required to acquire land to implement this route, there is no evidence that this would present insurmountable problems or that appropriate planning conditions could not be imposed [392].

500. As to the disagreements relating the detailed alignment and details of the access road at the Lisvane Road end, the Highway Authority and bus company are satisfied that the detailed engineering and layout would be satisfactory [260,385]. In this regard, the guidance in *MfS* is more applicable within this urban situation than that in *DMRB* which relates more to industrial and larger scale transportation schemes [259, 373]. Thus, I do not support the view that a right-turn lane which could not be accommodated with the highway land without major alterations to the existing junction and its approaches would be the only means of accessing the site from this direction. Although I regard the proposed access road widths as being at the minimum needed and can envisage situations where some congestion could arise with two approaching large vehicles [390-391], I find no compelling reason to disagree with the Highway Authority's view that from an engineering standpoint, the proposed access arrangement would work satisfactorily [278,389,398]. Nor do I find convincing evidence to conclude that any important nature conservation

interests would be affected by the additional use of the access road past the allotment and the Nant Fawr [397].

501. In response to the objections raised about the crossing of the meadows in the last appeal and now raised in respect of access Option A, the appellants now also propose to reverse the traffic flows to ensure that the primary car route would be via the Lisvane Road junction in the north-west corner, but with the bus route flowing through the development (Option C) [44]. The appellants point to the advantages of this arrangement with fewer vehicles crossing the meadows and the consequential lower levels of disturbance (being limited to buses), the consequential reduction in the width of the roadway, footways and alterations to street lighting arrangements [120,140,147,251]. Moreover, because it would be less convenient for car drivers heading to and from the City centre via Lisvane Road, there would be a greater incentive to utilise public transport, again reflecting national policy [267]. Option C would also bring about highway works in Lisvane Road that the Highway Authority agree would serve to slow traffic speeds and improve the situation for pedestrians and residents manoeuvring into and out of their driveways close to the junction of Lisvane Road with the access road. The Highway Authority regard such traffic management measures desirable but have no funding for their implementation in place [255, 264].

502. Option B, would be a combination of these with 25% of private cars using the northern Lisvane Road junction.

503. The appellant prefers Option C because of the potential modal shift resulting and as it would bring with it highway management improvements to Lisvane Road [266-267]. However, there is vociferous opposition to Option C by local residents, their representatives and by RAG [370, 377,384,389, 404,406-10,418]. Objections relate mainly to the disputed traffic generation figures and the methodology used to predict them and the impact upon an already congested part of the highway network that is used as a 'rat-run' [371, 386]. Also there is doubt in the concept that by making the route less convenient to motorists a modal shift would occur, and to the adverse impact upon existing users of the Lisvane Road and local residents [377,384]. It would also impact further south at the already congested Fidas Road junction [389, 395, 409] leading to still longer peak hour delays. One objector suggests that the likely congestion costs on the overall highway network would be significant and unacceptable [261-2,394-6].

504. The appellant estimates that there would be an increase of about 19% in the levels of traffic using Lisvane Road. Whilst objectors disagree, the Highway Authority does not [258, 370-371, 377, 386, 390]. Although such figures are disputed as being inaccurate and not taking sufficient regard to the abnormalities of the survey periods which included substantial road works on the network [263,395], I consider that this figure should be regarded no more than a guide, even though its validation suggests that it can be viewed as a reasonable representation [259,263]. Moreover, objectors argue that they do not take into account the widespread peak hour congestion along Lisvane Road and its feeder side roads. However, I consider that the assessment of the additional congestion costs should be treated with caution. In my view, whilst such calculations may assist at a macro transportation level, they may be too susceptible to local micro variations to provide a useful indicator of a specific development's impact [261-262, 395]. Likewise, there is no compelling evidence that convinces me that the Highway Authority is wrong in its

view that other parts of the highway network, such as at the Fidlas Road intersection, would not be capable of accommodating the additional traffic generated by the proposed development [260].

505. Of greater concern in my view, is the perceived impact upon the character of Lisvane Road. In this regard, I recognise that the proposed highway works would serve to slow traffic that could improve highway safety, as acknowledged by the Highway Authority [264].

506. However, although the Highway Authority now recognises that highway management benefits that would result from the proposed engineering works should be implemented in any case [256], it is evident from its original statement of evidence that there were reservations<sup>323</sup>. The revised traffic management measures proposed in the SOCG subsequently overcame them, but it is reasonable to conclude that the reason why they are now proposed, in the current form and extent, is because of the proposed development.

507. It is clear from an inspection of the junction and its immediate surroundings that, in the area likely to be mostly directly affected [18], Lisvane Road inclines down towards the junction with the existing access road and the Nant Fawr bridge crossing. I observed that traffic speeds tend to increase on this approach and exceed the speed limit as submitted in evidence [265]. There is restricted visibility on exiting private driveways opposite the junction and there are a number of side roads [379, 385].

508. In my view, whilst there are street lights amongst the trees and the road is subject to a 30mph speed limit, the narrowness of the road, its alignment and the proximity of walls, fences, access drives and the amount of general vegetation close to the highway all combine to create the character of a road leading out of the urban area. The road increasingly becomes the semi-rural character of a country road before re-entering the urban area further to the northeast<sup>324</sup>. To the north of the junction leading to the site, many of these characteristics continue with the road passing through a series of tight bends and pinch points with restricted horizontal and vertical forward visibility. Several traffic signs and road markings advise caution. These characteristics are significantly different to those that exist on the Rhyd-y-penau Road part of the network. There that part of the network displays the character and nature of district distributor roads where carriageways are consistently wide, with wide and continuous footways and dwellings set well back with driveways generally with satisfactory visibility of on-coming traffic.

509. I acknowledge therefore that, technically, the Option C could improve highway safety by reducing speeds that in turn could assist residents in manoeuvring into their driveways [380]. It would also be made capable of accommodating the additional traffic arising from the proposed development and could enable bus traffic to negotiate the junction. However, I consider that the impact of traffic from 324 houses upon the character of a progressively country road, would be harmful and detrimental to the amenities of local residents and of

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<sup>323</sup> Doc ID 12

<sup>324</sup> See photograph Doc CD 304 taken c50 metres south of junction

its users. Moreover, the introduction of the necessary additional road markings, carriageway narrowings (pinch points) and priorities would alter the existing pleasant and semi-rural character and appearance of this part of Lisvane Road [381].

510. Furthermore, I agree with many of the points raised by third parties and by RAG regarding the expectation that there would be a modal shift away from car usage [378,384,394,396]. Whilst this must be a worthy aspiration and one that should be encouraged, I am not convinced that in this case, it could be realised despite the residents' bus travel subsidy. Although geographically well located and the through-bus service would assist, because of (a) the topography, (b) the highway characteristics of Lisvane Road and (c) the distances between the rail station and most of the proposed houses to the likely destinations, I consider that residents would be reluctant to shift in significant numbers to non-private modes of transport. Having regard to the nature of the Lisvane Road and the proposed traffic management measures, I do not agree that they would create a more pleasant environment, especially for pedestrians and cyclists [255, 262,384, 396]. Thus, in this case, I conclude that the likely modal shift would not be sufficient to outweigh the identified harm.

511. I conclude therefore, that Option C would not be acceptable. Nor would Option B, which although resulting in a lesser adverse impact in terms of additional traffic, would not benefit from the traffic management improvements proposed in Option C. Therefore, I conclude that Option A – all private car traffic using the Rhyd-y-penau / Cyncoed Road roundabout, with a bus gate close to the proposed Wetland and Education centre – would be the only acceptable Option. As made clear earlier, I consider that the impact of this access arrangement upon the character and appearance of the part of the meadows affected would not be significant and would be materially less than considered at the last appeal. In my view, the avoidance of that impact by relying upon Options B or C would not outweigh the identified harm that would result from their implementation.

Other policy considerations:

512. The Environment Agency has confirmed that because the reservoir is an impounding structure and the because of the full retention of the reservoir embankments, the site lies outside the flood risk zone. They raise no objection to the proposal and there is no conflict with TAN15 or LP policy 9 [24, 401].

513. The Design Statement provides full illustrative representations of the proposed development. The Council considers that it provides a sufficiently clear indication that the proposed development would meet their design standards and policies for housing areas and landscaping. The scheme would also provide for 30% affordable housing that would again meet the Council's policy [111-112]. Even though adverse views have been expressed about the placing of new housing within the bowl of the reservoir [385], I consider that the overall development would create an attractive living and recreational environment, both for residents and visitors. Thus it would meet LP policies 11 and 24 and the associated policies relating to infrastructure and open space provision.

514. As to the Council's housing policy, the proposal would not offend LP policy 21 and would meet the Plan's relevant housing objectives [270-1]. As to housing land supply, recently published evidence was submitted that indicated at April 2007

there was a theoretical supply of 19.8 years. However, completion rates had increased recently to 61% above the average annual requirement.<sup>325</sup> When based upon average building rates over the last 5 years, the supply falls to 4.4 years [272, 321]. However in the light of these unusual circumstances, the 2008 Study therefore revised the methodology away from the residual method of calculation and now produces a land supply figure of 7.9 years. Notwithstanding the current economic turbulence and its impact upon house starts, completions and sales, given this up-to-date information I conclude that there is no overwhelming need for additional housing land that should weigh in favour of the development proposal. However, there is no policy basis for taking the contrary view that the lack of need weighs against the application.

515. The last appeal considered the status of the reservoir in terms of pdl and the possibility of the drain down occurring. The latter is now more certain. As to the pdl aspect, although I have concluded that the reservoir should be viewed as a separate visual entity within the Nant Fawr corridor in terms of the impact of the proposed development, it comprises more than just the area beneath the water. It also encompasses the grass embankments and when standing upon them, it has a visual relationship with the Lisvane reservoir to the north, to the woodlands to the south and to the vegetation that defines the meadows to the east and the housing areas to the west. In that way, it has become part of the wider landscape and in these terms has been absorbed into it. The nature conservation of the embankments similarly supports this stance. Thus I find no reason to disagree with the previous Inspector's view that, although it is clearly different from a true greenfield site, it does not represent pdl [97,338-340].

516. Nevertheless, this does not represent an obstacle to development that would satisfy the strict tests set out in LP policy 7 and thus I afford little weight to this matter.

517. Concern has also been expressed by third parties about the loss of the water storage resource in terms of climate change [408,415]. SP policy C8 (which seeks to protect water resources) is cited in support of this viewpoint. However, the reservoir is now redundant and does not provide potable or industrial water. Yet it remains a liability to its owners who are required under the Reservoirs Act to ensure its structural integrity and safety [22,97,129]. The Water Authority no longer need the facility and the purpose of policy C8 relates to the protection of water resources for nature conservation and recreation. In view of my conclusions in regard to these matters, I find no conflict with this policy.

518. Submissions were made relating to Articles 2, 5 and 8 of the European Convention of Human Rights in respect of residents in Lisvane Road opposite the proposed Option C access junction [85-90,377]. Having heard evidence at the Inquiry from all parties, I have commented upon the implications in terms of highway safety and my conclusion that the safety of residents using the driveways could be improved as a result of the proposed traffic management works. Nevertheless, I have concluded against Option C for other reasons. If that conclusion is not accepted and Option C is approved, given the Highway Authority's clear advice that highway safety would be improved and the opportunities given and taken to

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<sup>325</sup> Docs CCC8 & CD 285

examine the issue in detail and the merits of the proposals at the Inquiry, I consider that there would be no violation of residents' Human Rights.

The S.106 Planning Obligation (unilateral undertaking) and planning conditions

519. The executed Planning Obligation (Unilateral Undertaking) would ensure the provision of the affordable housing, recreational, educational facilities, public open space and nature conservation measures, together with the transportation measures on and off the site. Funding provision would also be made for the temporary relocation of the sailing centre during the drain down and maintenance period and the establishment of a new watersports centre at the site [421]. Whereas at the last appeal there was an outstanding concern about the long term management of the nature conservation interests, these have now been resolved through the formation of the Nant Fawr Education and Ecology Trust and the provision of its funding over a 25 year period. Evidence to the Inquiry expressed a confidence that at the end of that period, various sources of continuing funding or income streams would be available.

520. The only outstanding concern raised by the Council in relation to the Obligation related to matter of whether sufficient funding was included within the contributions to the Trust to cover insurance liabilities for the reservoir structure [420]. From the expert evidence submitted in respect of the likely costs of insurance and the assessment of risk and the lack of any contrary expert view [68], I conclude that there is no compelling evidence to conclude that the funding package with the Trust would not be sufficient in this regard.

521. I consider that the measures included with the Unilateral Undertaking satisfy the tests set out in Circular 13/97.

522. Turning to the possible planning conditions, a draft list was discussed at the Inquiry and mostly agreed<sup>326</sup>. Several amendments were also canvassed and thus I comment upon these and the draft conditions in the light of circular 35/95.

523. Since the closing of the Inquiry, SI 2008(No.2336) has been published and come into force requiring a change to the definition of standard Reserved Matters. Although the application was submitted in outline with all matters, except access, being reserved for later consideration thereby determining the route connections to a public highway at this stage, the new definition of access now includes routes and access within the appeal site. I do not consider that this new definition affects the nature of the application and this point need not be referred back to the parties. However, a revision to the former standard reserved matters condition is required.

524. In respect of draft condition 1(C), due to the complexity of the project including arrangements for the maintenance works and the lease arrangements and the need to ensure that condition precedent 'Grampian' type requirements had been implemented before commencement, the appellants suggested that in place of the standard three year period for the submission of reserved matters and a five year start date, five and seven years should apply. Although this could delay a start, I find no reason to disagree in this case.

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<sup>326</sup> Doc CCC18

525. In respect of draft condition 2, it was suggested that the details required to be submitted for approval should be more explicitly linked to the illustrative plan that had informed the Inquiry's understanding of the proposal.<sup>327</sup> I agree, but consider that draft conditions 8, 9 and 10 should be subsumed into one condition. In the event of all three highway access Options being considered acceptable, the condition should include a requirement for the developers to notify the Council of which Option is to be implemented.

526. In draft condition 3, due to the need to carry out construction activities that may not comprise development within the meaning of the Act, the appellants suggested that as activities such as extensive site clearance would be involved that could impact upon nature conservation, noise, dust and other issues, the definition be widened to include 'construction activities, other works or development'. The Council agreed and I find no reason to disagree.

527. Draft condition 4 includes the submission of details of the depth of the new lake and relates to its suitability for sail training. However, the draft implies a minimum depth of 1.8 metres that fails to take into account the proposed beach shelving close to the lake side. Having regard to the 1 metre contours shown in the Design Statement<sup>328</sup> and to the cross sections on plan SK22<sup>329</sup>, I consider that this minimum should be achieved with 25 metres of the edge, unless otherwise agreed in the approved scheme.

528. Draft conditions 6, 7, 8 and 9 read together to ensure that the overall height of the houses would accord with the understanding as presented in the ES and the submitted Design Statement and specify the maximum number of dwellings. As noted above draft conditions 8, 9 and 10 can be subsumed into condition 2.

529. Draft condition 10 relates to the highway access Options. As my recommendation is that the housing development should be served from the Cyncoed Road/ Rhyd-y-penau Road roundabout, the draft condition should be amended accordingly. If my recommendation in this regard is not accepted, numbers representing the relevant percentage figures reflecting Options B and C should be inserted and condition 2 adjusted accordingly. I consider that the introduction of any variation to the position of the bus gate in relation to the play areas, should be left to the Planning Authority to decide and need not be specifically dealt with by condition [44].

530. Although dealing with matters of detail that would flow from any approval of reserved matters, no comments were made about draft conditions 11, 12, 13, 14 and 16. However, the requirement in draft condition 14 that the sediment trap be 'maintained' is imprecise and conflicts with paragraph 82 of the circular. Moreover, as such a facility would be within or beneath highway or other adopted land, and thus be subject to normal maintenance obligations, I consider that such a condition

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<sup>327</sup> Doc CD 281

<sup>328</sup> Doc ID 15 appendix 10 page 50; CD 316 for measurements

<sup>329</sup> See CD 66

would not be necessary. It was agreed that draft condition (15) relating to connections to the public sewer was not necessary given other legislative powers.

531. Draft conditions 17-24 and 26-28 attracted no comments, although it was suggested that in view of the RAI's evidence relating to the possible use of coffer dams to contain some of the nature conservation interests, some latitude to enable this work should be included in condition 25. In draft condition 29 relating to highway infrastructure, it was agreed that highway structure (e.g. cantilevered bridge over the Nant Fawr stream close to the allotments turn), details of the bus gate control mechanism rather than CCTV cameras and street lighting should be included.

532. In draft condition 30, as the watersports centre would attract boat trailers, reference to these should also be included, and the facility 'retained' rather than 'maintained' as in paragraph 530 above.

533. Draft conditions 31-36 and 41 deal with the habitat translocation and species protection and encouragement. Where surveys are required this arises from the time delay involved rather than a lack of baseline knowledge covered in the ES, which is clear in section 9 that there would be no likelihood of significant harm to protected species. More recent expert evidence indicates that there is no evidence that bats and otters use either Llanishen or Lisvane reservoirs<sup>330</sup>. The evidence, with which CCW concur, indicates that the proposals would accommodate and enhance protected species and their habitat. I share this view and find no reason to conclude that the TAN5 tests could not be accommodated in any mitigation measures needed to ensure that the species' favoured conservation status would be retained[227, 449]. As a precautionary measure, however, the carrying out of new surveys would be appropriate.

534. It was also agreed that draft condition 38 should be replaced by one providing for the approval of a scheme to regulate the translocation of toads. Draft condition 40 reflects the requirements of CCW in terms of monitoring and the management of the SSSIs and adjacent areas. Draft conditions 42 and 43 similarly relate to these interests. The ES deals with the principles of these matters and thus I consider the condition appropriate and necessary. It should be noted that CCW also request that a note be added to any permission reminding developers of the prior consent regime under S.28 of the Wildlife and Countryside Act 1981 (as amended) for works that may not comprise development, eg site clearance. However, as this matter is covered to some degree by the suggested alteration to draft condition 3, I do not consider that this is necessary.

535. Draft condition 44 relates to archaeology interests which the ES indicates is unlikely to be significant as the appeal site has previously been disturbed by construction works. A watching brief is therefore suggested as a safeguard. Draft condition 45 relates to the consequential works following the reservoir's drain down and its survey, and the protection of the SSSI. This is also necessary given the uncertainty of what will be found at the bottom of the reservoir.

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<sup>330</sup> Doc ID16 para 3.2.6

536. Draft condition 46 provides for the regulation of spraying operations to which the Council's ecologist referred and the need to safeguard the embankment SSSI's habitat. I consider it necessary.

537. It was agreed that draft condition 48 relating to flood risk was not required given the Flood Consequences Assessment in the ES and EAW's support<sup>331</sup>.

538. Draft condition 47 addresses the alternative provisions for the sail training and links with the S.106 and draft condition 49 regulates the use of the water to non-motorised craft.

539. Draft conditions 52 and 53 deal with the highway access options and the requirements apply to each of the alternatives, although the submitted details would differ. These would also involve the need to have in place other consents (eg S.278 Highways Act). I agree with the appellant's suggestion that the implementation of the required works should link to the occupation of the first dwelling rather than to the commencement of the development, which could be regarded as self-defeating. As my favourable recommendation only applies to Option A, draft condition 52 should be amended to refer to highway improvements as set out in the SOCG and not to a new junction. Also details of the haul road to provide access to construction vehicles from the roundabout and wheel washing facilities should be included. If my recommendation is not accepted, and other Options are approved, then the conditions should reflect the details included in the respective SOCG [46].

540. Draft condition 54 relates to bus shelters which is a detailed matter that may be included now as it relates to the provision of the new bus service specified in the S.106 Obligation.

541. Draft condition 55 requires a construction method statement to be agreed. The ES provides the basis for this and the times of construction traffic. It was agreed that this should be included<sup>332</sup>.

### **Overall conclusions**

542. Having considered all the evidence, including the findings of the previous Inspector and appeal decision, I have concluded that the proposed development is significantly different from the proposal that was rejected. The fundamental differences are that the housing development would be contained within the bowl of the reservoir and would not impinge upon the character or appearance of the Nant Fawr meadows. As such, the development would not harm the function, openness, character or appearance of this part of the Nant Fawr corridor, its coherence, integrity or its strategic function, or that of the wider river corridor.

543. Secondly, the nature conservation interests are significantly different from the last appeal and attract no objections from CCW. The lower order nature conservation interests within the reservoir would be lost in any event as a result of the necessary drain down process, but upon replenishment, there is a high likelihood that its nature conservation status would be re-created within a short

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<sup>331</sup> Doc CD 168

<sup>332</sup> Doc CD97 table 10.2 page 244

period. Overall, there would be significant benefits to nature conservation of both the site and the neighbouring areas and there would be enhanced opportunities for a wide section of the population to enjoy and have access to them.

544. Thirdly, the alignment of the access route across the meadows would be more sensitive to the local topography than was previously proposed. The impact of the proposed route and its use as in Option A, would be localised to part of a 1ha parcel and would not represent a significant interference with the use of the meadows by walkers. Any adverse impact upon the semi-improved grassland and wild flowers would similarly be localised and marginal and outweighed by the wider nature conservation and amenity benefits.

545. Concerns about the loss of the sailing and sail training facility have been examined in depth. I have concluded that the proposed recreational, amenity and nature conservation facilities that the scheme would bring forward would provide a wider range that would be available to a wider population. The proposals would not diminish the extent of the sailing facilities compared to those provided at the existing reservoir, other than during the inevitable maintenance period. For these reasons, I conclude that the proposal would accord with LP policy 7 and the related policies.

546. For all these reasons, **I recommend** that outline planning permission is granted for development comprising residential units, sailing lake and clubhouse, wetlands habitat and educational/community centre, re-profiling of the existing reservoir all with structural landscaping, roads, footpaths, cycleways and associated highway works (and includes the demolition of Nos.147-151 Rhyd-y-penau Road and highway works to Cyncoed , Rhyd-y-penau and Lisvane Roads) at Llanishen Reservoir, Lisvane Road and Nos.147-151 Rhyd-y-penau Road, Cardiff CF23, subject to the conditions set out in the annex to this report.

*R.M. Poppleton*

Inspector

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**Annex:**  
**Recommended planning conditions**

**1. Standard Outline (Omitting Access)**

- (A) Approval of the details of the access within the reservoir embankment part of the site, the appearance, landscaping, layout and scale of the buildings (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- (B) Plans and particulars of the reserved matters referred to in condition 1A above, shall be submitted in writing to the local planning authority and shall be carried out as approved.
- (C) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
- (D) The development hereby permitted shall be begun either before the expiration of seven years from the date of this permission or before the expiration of two years from the date of the last of the reserved matters to be approved, whichever is the later.

**2. Indicative Layout**

The residential element of the development hereby approved shall be limited to a maximum of 324 residential dwellings and shall all be accessed off the roundabout at the junction of Rhyd-y-penau Road with Cyncoed Road hereby approved. The details submitted in respect of condition 1 above shall substantively accord with Figures 1.1 and S1.2 of the April 2008 Environmental Statement and the illustrative drawing 1257-30-1 and the Design Statement (Doc ID 15 appendix 10).

**3. Phasing of Development**

No construction activities, other works or development shall take place until details of the phasing of these activities have been submitted to and approved in writing by the Local Planning Authority. The activities shall be implemented in accordance with the approved details.

**4. Altered Site Levels**

No development shall take place until plans showing details of all existing and proposed ground levels including underwater levels of the proposed water areas and the lake side profile have been submitted to and approved in writing by the Local Planning Authority. The proposed lake shall be designed to be able to provide a minimum water depth of 6 metres beyond a distance of 25 metres from the lakeside. The development shall be implemented in accordance with the approved details.

**5. Hydrology**

A scheme for the hydrological arrangement of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The submitted scheme shall include details of all water supply to the site; all associated infrastructure (such as sluices, pumps, culverts); and management arrangements to retain the water depth as required above. The hydrological arrangement shall be implemented in accordance with the approved scheme and shall have no adverse impacts on the water supply and quality of Lisvane Reservoir SSSI.

**6. Height of Buildings**

The residential development hereby approved shall be limited to the storey heights specified on Figure 1.1 (drawing YOR 1257-1.1-7) of the April 2008 Environmental Statement.

**7. Details of Buildings levels**

No development shall take place until plans showing details of the proposed floor levels of any building in relation to the finished levels of the site have been submitted to and approved in writing by the Local

Planning Authority. The development shall be constructed and completed in accordance with the approved details.

#### **8. Material specification required**

The external walls and roofs of all buildings shall be constructed and finished in accordance with a schedule of materials and finishes which shall be submitted to and approved by the Local Planning Authority prior to the commencement of development. Development shall proceed only in accordance with the approved schedule.

#### **9. Drainage details**

No development shall take place until a scheme for the foul and surface water drainage of the site and any connection to the existing drainage system, including any phasing scheme, has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of surface water drainage during both the construction and operation phases. No part of the development shall be occupied until the approved scheme has been carried and completed.

#### **10. Drainage Interception**

Details submitted in pursuance of condition 9 shall include measures to intercept and attenuate surface water prior to discharge into the lake/wetlands hereby approved.

#### **11. Sediment Trap**

Prior to the commencement of development, details of a sediment trap facility to be provided at the southern end of the application site, shall be submitted to and approved in writing by the Local Planning Authority. The sediment trap shall be provided in accordance with the approved details and thereafter retained in working order.

#### **12. Details of Refuse Storage**

Prior to the commencement of each phase containing residential properties, the sailing centre, or the education/wildlife centre identified in relation to Condition 3, details of facilities for the storage of refuse containers shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided before the development is brought into beneficial use.

#### **13. Landscape Scheme**

No development shall take place until a landscape masterplan has been submitted to and approved in writing by the Local Planning Authority. Prior to the commencement of each phase of the development identified in relation to Condition 3 a scheme of landscaping (which shall include details of paved areas, verges, created habitats and other open spaces including water areas and water edge), which shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of each relevant phase of the development, shall be submitted to and approved in writing by the Local Planning Authority.

#### **14. Implementation of Landscape Scheme**

All planting, seeding, turfing or paved areas comprised in the approved details of landscaping, excluding details contained in Condition 39 (Turf and coping stone translocation), shall be carried out in the first planting and seeding season following the first occupation of, or the completion of each relevant phase of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of each relevant phase of the development die, or are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

#### **15. Details of Earthworks**

No development shall take place until details of earthworks, including details submitted in pursuance of condition 14, have been submitted to and approved in writing by the Local Planning Authority. These details shall include a method statement and timetable for areas of storage of excavated materials, details of any temporary storage and final placement areas, the proposed grading and mounding of

land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding land form, together with an implementation programme for the proposed works. The earthworks shall be carried out for each relevant phase of the development in accordance with the approved details.

#### **16. Imported Materials**

Any soils or similar fill material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material assessed as acceptable in accordance with the approved investigation scheme shall be imported onto the site. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

#### **17. Ground Gas Protection**

No part of the development hereby permitted shall be commenced until a scheme detailing the measures necessary for the purpose of monitoring gases generated on the site or land adjoining thereto and for any measures necessary to protect the development has been submitted to and approved in writing by the Local Planning Authority. Any such scheme shall provide details of measures that are required to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site. Gases include landfill gases, vapours from contaminated land sites and naturally occurring methane and carbon dioxide, but do not include radon gas.

All measures specified in the above scheme shall be undertaken and completed in accordance with a timetable approved as part of the scheme. The measures shall be retained and maintained until such time as shall be specified in the approved scheme, or until such time as may otherwise subsequently be agreed to in writing by the Local Planning Authority, whichever is sooner.

#### **18. Contaminated Land Measures**

No part of the development hereby permitted shall be commenced until a scheme detailing the measures necessary for the purposes of identifying chemical and other contaminants on the site and to ensure that the land is suitable for the proposed development has been submitted to and approved in writing by the Local Planning Authority. Any such scheme shall include details of any measures necessary to protect future occupiers/users of the land from chemical and other contaminants. All measures in the approved scheme shall be undertaken in accordance with a timetable which shall first be agreed in writing with the Local Planning Authority.

#### **19. Water Quality Monitoring**

The water quality of the Nant Fawr stream shall be monitored throughout the construction period as it enters the north of the site and exits the south of the site, in accordance with details (including monitoring locations and monitoring frequency) which shall be submitted to and approved in writing by the Local Planning Authority before development commences. Measures to prevent any form of pollution entering the proposed lake, wetlands and Lisvane Reservoir and measures to prevent pollution to the watercourse during the construction and operation phases, and any remedial measures required in response to such events, shall be submitted to and approved in writing by the Local Planning Authority before development commences and implemented in accordance with the approved details.

#### **20. Storage of Hazardous Materials**

All fuel, oil or chemical storage on site shall be surrounded by an impermeable bund with a storage capacity 10% greater than that of the material being stored. No discharge shall be permitted from such bunds other than by a licensed carrier.

#### **21. Noise Levels**

Any piling required in relation to the development hereby permitted shall utilise low vibration machinery. No sheet piling shall be carried out on site except in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority prior to construction works, other works or development commencing.

## **22. Control of Dust Emissions Method Statement**

A methodology for minimising dust emissions during the construction programme shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. The methodology shall include:

- the damping down of exposed soils, loose materials or unmade surfaces close to sensitive locations during dry weather;
- the sheeting of vehicles transporting friable materials to or from site;
- limiting vehicle speeds over unmade surfaces;
- controls applied to the cutting and grinding of materials;
- restrictions on the burning of materials;
- application of the principles of the 'best practicable means' to all works;
- the placing of machinery with exhaust emissions as far from sensitive receptors as practicable and switching off engines when not in use;
- use of cleanable hard standings and provision of wheel washing facilities where appropriate;
- operation of a complaint and investigation response procedure; and
- compliance with relevant legislation and British Standards.

The approved methodology shall be implemented and monitored throughout the construction phase.

## **23. Wheel Washing**

Facilities for wheel washing construction vehicles prior to re-entering the public highway, along with details of the means of disposing of resultant effluent, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented immediately upon the commencement of ground works or other construction works within the site and maintained for the duration of the construction phase.

## **24. Provision of Road Prior to Occupation of Dwellings**

No dwelling shall be occupied until that part of the road and footpath which provides access to it and all surface water drainage works for the said road have been laid out, constructed and completed (except for the final surfacing) in accordance with the approved plans.

## **25. Additional Highways Details**

Prior to commencement of each relevant phase of the development, the following items shall be submitted to and approved in writing by the Local Planning Authority. The details shall thereafter be completed in accordance with the approved specification prior to beneficial occupation of any part of the relevant phase of the site:

- detailed specifications of all roads, highway structures, footways, cycleways, car parking and cycle parking provision within the site;
- details, including location and design, of the bus stops, bus shelters and 'bus gate';
- street and pathway lighting substantially in accordance with figure SCG32A;
- details of the design specification of the junctions between the proposed access roads and the highways, substantially in accordance with the following agreed details shown on figures SCG 15A, 18A, 23A, 24A, 25A, 26A, 29A, 30A (Option A), and 33A;
- details of the traffic signal system and the bus gate control mechanism.

## **26. Parking within Curtilage**

The parking areas for the sailing centre and the education/wildlife centre shall be provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to those facilities being brought into beneficial use and thereafter shall be retained and shall not be used for any purpose other than the parking of vehicles.

## **27. Otter Surveys and Method Statement**

Prior to the commencement of construction works, other works or development a scheme for dealing with otters during the construction period shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- (i) an up to date otter survey and mitigation scheme which shall include the provision of a minimum of three purpose built holt/shelter sites at streamside locations; and
- (ii) a methodology for the treatment and management of otters during the construction programme. The methodology, which shall be without prejudice to any requirements imposed by the Welsh Assembly in connection with any license that may be needed, shall be implemented and monitored throughout the construction phase of the development and during construction of later works to improve habitat conditions.

The methodology shall include the following features:

- measures to allow for safe otter passage through the working site at all times outside working hours;
- no trenches shall be left open overnight which do not provide an escape route;
- any fencing that is erected prior to or during the works shall allow access for otters to the Nant Fawr and its banks at all times; and
- all construction debris shall be removed from the Nant Fawr and its banks, and the areas disturbed by construction (including the stream bed and stream bank) should be restored to a natural condition.

Development shall proceed only in accordance with the approved scheme.

### **28. Road Bridge**

Details of any road bridge over the Nant Fawr shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of its construction works. The approved details shall be designed to have regard to the use of the watercourse by otters. The road bridge shall be constructed in accordance with the approved details.

### **29. Aquatic Plants Method Statement**

A methodology for the treatment, management and translocation of aquatic plants during the construction programme shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. The methodology shall be implemented in accordance with the approved scheme and monitored throughout the construction phase.

### **30. Reptile Method Statement**

A methodology for the treatment, management and translocation of reptiles during the construction programme shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. The methodology shall be implemented in accordance with the approved scheme and monitored throughout the construction phase.

### **31. Amphibian Method Statement**

A methodology for the treatment, management and translocation of amphibians during the construction programme shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. The methodology shall be implemented in accordance with the approved scheme and monitored throughout the construction phase.

### **32. Fish Method Statement**

A methodology for the treatment, management and translocation of fish during the construction programme shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. The methodology shall be without prejudice to any legitimate license requirements imposed by the Environment Agency. The methodology shall be implemented in accordance with the approved scheme and monitored throughout the construction phase.

### **33. Japanese Knotweed Method Statement**

Prior to the commencement of development, a detailed scheme for the treatment and disposal of soils, including imported and exported soils, affected by Japanese Knotweed shall be submitted and approved in writing by the Local Planning Authority. Such a scheme shall accord with the advice in the publication *The Eradication of Japanese Knotweed* (WDA: Cardiff 1998) and *Guidance for the Control of*

Invasive Plants Near Watercourses (Environment Agency 2001). The development shall be carried out in accordance with the approved scheme.

#### **34. Reservoir Drain Down**

No development shall take place until a method statement detailing the process of the draining the Llanishen Reservoir have been submitted to and approved in writing by the Local Planning Authority. The draining process shall not take place other than in accordance with that method statement. The statement shall include details of timing and programming and of any subsequent service infrastructure works, including any required by condition 41. The works shall be implemented in accordance with the approved method statement.

#### **35. Nant Fawr works**

All works to the Nant Fawr watercourse shall be carried out in accordance with a detailed scheme of works, including timetabling of implementation, which shall be first submitted to and approved in writing by the Local Planning Authority.

#### **36. Environmental Monitoring, Management and Protection**

A scheme or schemes concerning methods of monitoring, management and protection of the Llanishen and Lisvane Reservoir Embankments SSSI, Lisvane Reservoir SSSI and other retained areas of ecological importance located both on and adjacent to the site from potential harm during all stages of the construction of the development and the establishment of new habitats shall be submitted to and approved in writing by the Local Planning Authority prior to commencement. The agreed scheme or schemes shall include details concerning the appointment and responsibilities of an Environmental Liaison Officer. The development shall be carried out in accordance with the approved scheme or schemes unless otherwise agreed in writing by the Local Planning Authority.

#### **37. Bat Survey and Mitigation Works**

Prior to the commencement of development the following shall be submitted to and approved in writing by the Local Planning Authority:

- (i) An up-to-date survey to establish whether there are any bat species listed under Schedules 2 or 4 of The Conservation (Natural Habitats etc) Regulations 1994 on the application site. If any bat species are found no works of site clearance, demolition or construction shall take place in pursuance of this permission until mitigation measures have been submitted to and approved in writing by the Local Planning Authority.
- (ii) A scheme of mitigation which shall include but not be limited to the following and be without prejudice to any requirements imposed by the Welsh Assembly in connection with any licence that may be needed: the provision of a minimum of ten bat boxes in appropriate locations to be agreed with the Local Planning Authority around retained habitats, the refurbishment of the disused pump house for bat roosting and the provision of roost structures on the Wildlife Centre.

The approved scheme of mitigation shall be implemented in accordance with a phased programme and timetable to be approved in writing by the Local Planning Authority as part of the submitted details and shall be monitored throughout the construction/operation phases of the development in accordance with details to be likewise approved.

#### **38. Site Fencing Plan**

Prior to commencement of construction works, other works or development a scheme for the location, specification, phased erection and, where required, the removal of all temporary and permanent fences shall be submitted to and approved in writing by the Local Planning Authority. The site fencing programme shall be carried out in accordance with the approved details. The fencing plan shall ensure that contractors are at all times physically confined to areas where work is required while allowing access for nature conservation management only to retained habitat areas, including but not limited to that part of the Llanishen and Lisvane Reservoir Embankment SSSI that falls within the application site and is to remain undeveloped. No fence shall be erected closer than 1 metre from any part of the retained part of the embankments SSSI shown on Figure 1.1 of the April 2008 Environment Statement.

### **39. Turf and Coping Stone Translocation**

Prior to the disturbance of any part of the Llanishen and Lisvane Reservoir Embankment SSSI, a method statement detailing how translocation of grassland containing grassland fungi and coping stones containing lichen is to be carried out shall be submitted to and approved in writing by the Local Planning Authority. The method statement shall include details of:

- Location of appropriate permanent sites
- How these sites will be prepared to receive translocated turf/copings
- Details of how turfs and coping stones will be moved
- Timetable for translocation linked to the phasing of construction operations

The development shall be carried out in accordance with the approved method statement.

### **40. Archaeological Watching Brief**

The developer shall ensure that a suitably qualified archaeologist is present during the undertaking of any ground works in association with the southern access road crossing the Nant Fawr meadows outside the site of the existing reservoir area, so that an archaeological watching brief can be conducted. The archaeological watching brief shall be undertaken to the standards laid down by the Institute of Field Archaeologists. The Local Planning Authority shall be informed in writing, at least two weeks prior to the commencement of the development, of the name of the said archaeologist.

### **41. Services**

Prior to the commencement of construction works, other works or development, details of the following service infrastructure works shall be submitted to and approved in writing by the Local Planning Authority:

- lowering of the supply pipe from Lisvane Reservoir;
- construction of outlet structure to the south;
- construction of the bridging structure over the Nant Fawr and the northern access road.

The development shall be completed in accordance with the approved details.

No services shall be installed within the retained parts of the Embankments SSSI or within a 1 metre buffer zone around the SSSI.

### **42. Buffer with SSSI**

The development shall be designed and constructed to retain a minimum distance of 25 metres between the residential gardens (including planted amenity space) and the retained sections of the Llanishen and Lisvane Reservoir Embankment SSSI. The development shall be designed and constructed to retain a minimum distance of 5 metres between all substations and the Llanishen and Lisvane Reservoir Embankment SSSI.

### **43. Securing the Provision of Alternative Sailing Locations**

In the event of sailing training still subsisting on Llanishen Reservoir at the time of commencement of development, no development shall take place until there has first been agreed in writing with the Local Planning Authority a scheme for both the temporary and, if required, permanent relocation of such sailing training to Cardiff Bay or such other location as may be agreed by the Local Planning Authority. The scheme shall include details of how it is to be implemented.

### **44. Motorised Watersports**

No motorised watersports activities shall take place on the approved lake at any time, with the exception of powered safety boats, unless otherwise agreed in writing by the Local Planning Authority.

### **45. Public Art**

A scheme of public art in line with the Council's Public Art Supplementary Planning Guidance shall have been submitted to and approved in writing by the Local Planning Authority and the approved scheme shall, unless otherwise agreed with the Local Planning Authority, be implemented prior to the beneficial use of the residential development.

#### **46. Energy Efficient Design**

No development shall commence in respect of any residential phase (as approved pursuant to condition 3) before the submission to, and approval in writing by, the Local Planning Authority of a Code for Sustainable Homes design stage assessment report in respect of either that phase or the whole development to the effect that each dwelling type within the relevant phase or whole development achieves Code Level 3 or better (reference to Code for Sustainable Homes shall be taken to include any relevant successor standard). Each dwelling type shall be provided in accordance with the approved report.

#### **47. Lisvane Road Junction Improvements**

Prior to the commencement of development details of the highway improvements to the junction with Lisvane Road, substantially based upon Figure SCG18A, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and shall be completed prior to the occupation of the first dwelling or as otherwise approved under condition 3 above.

#### **48. Cyncoed Road/Rhyd-y-Penau Road Junction Improvements**

Prior to the commencement of development details of the highway improvement works to the Cyncoed Road/Rhyd-y-Penau Road roundabout, substantially in accordance with Figure SCG15A shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and shall be completed prior to the occupation of the first dwelling hereby approved.

#### **49. Bus Shelters**

Prior to the commencement of development details of 4 no bus shelters, including their design and precise locations, shall be submitted to and approved in writing by the Local Planning Authority. The shelters shall be constructed in accordance with the approved details prior to the beneficial occupation of 25% of the dwellings hereby approved.

#### **50. Construction Traffic Management**

Prior to commencement of each phase of development approved under condition 3 above, a scheme of construction traffic management including the construction of haul roads and wheel washing facilities shall be submitted to and approved in writing by the Local Planning Authority: the scheme shall include details of construction traffic routes, site hoardings and site access. The construction of the relevant phase shall be managed strictly in accordance with the approved scheme.

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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Lowe QC	Instructed by Ms Polly Ellis, Solicitor, Cardiff County Council
He called:	
Dr M Hockaday BSc, PhD, FRTPI, FCIM, FRSA	Director, Nathaniel Lichfield & Ptnrs (Cardiff)
Dr W. Latimer BSc., MSC., Phd., IEEM, CEnv	Ecologist: Faber Maunsell
Mr Dawson BSc., MICE, MIHT	Operational Manger: Transportation Section
Mr J J Hart	Yachtmaster Ocean sailing instructor
Mr S. C Howell	Operational Manager: Cardiff Harbour Authority

### FOR THE APPELLANT:

John Steele QC, assisted by Robert Palmer of Counsel	Instructed by Mr Charles Felgate & Peter Noble, Solicitors, Geldards, LLP, Dumfries House, Dumfries Place, Cardiff, CF10 3ZF
He called:	
Mr P Waldren BA(Hons), BPI, MRTPI	RPS Plc (Planning)
Mr B Denney BA (Hons) DipLA, MLI, CEnv, MIEMA	RPS Plc (Landscape)
Mr M Axon BSc (Hons) MIHT	Savell Bird & Axon (transport)
Mr D Woodfield MIEEM, CEnv	Director of Bioscan (UK) Ltd (Ecology)
Prof. T Stevens BA(Hons) Phd	Stevens & Assoc., Coastline House, Loughor, Swansea, SA4 6SD (Leisure and tourism)
Terry Swanson BSc	RPS (Hydrology)
Mr Derek R Moore OBE	Nant Fawr Ecology and Education Trust, Rowan House, Gors Road, Salem, Llandeilo, SA19 7LY
Mr Barnes Reg Arch RIBA	President Dinghy Cruising Association, 43 Withan Friary, Frome, Somerset BA11 5HF
Prof. Andrew Hughes BSc, Phd, DMS, CEng, FICE, FCIWEM, MIMgt	Reservoirs Panel Engineer (RAI)



## **DOCUMENTS LISTS:**

These are arranged as inquiry documents (ID/...) ; documents submitted by the Council (CCC/...) ; documents submitted by RAG (RAG/...) ; documents submitted by the appellant (CD/...) and documents submitted by third parties (TP/...)

### **INQUIRY DOCUMENTS: ID/..**

- 1 Attendance sheets
- 2 Council's notification of the inquiry
- 3 Notes of Pre-inquiry meeting 18 March 2008
- 4 Attendance lists of those at the Pre-inquiry meeting (PIM)
- 5 List of third party letters
- 5a Written representations received prior to opening in accordance with PIM timetable
- 6 List of written representation returned as being beyond cut-off set out at the PIM
- 7 Written representations received between inquiry opening and cut-off of 1 July 2008 announced during inquiry
- 8 Signed Section 106 Unilateral Undertaking 29 August 2008

### *LPA Statements of evidence:*

- 9 Dr M.Hockaday – Nathaniel Lichfield & Ptns
- 9a Dr M Hockaday – extracts of published material
- 10 Mr S.C Howell – Harbour Authority Operational Manager
- 10a Mr S C Howell – rebuttal statement
- 10b Mr S C Howell's rebuttal to Prof Stevens
- 11 Mr J J Hart - Sailing
- 12 Mr P Dawson – Highways: including appendices A, A1, B & B1
- 13 Dr W Latimer - Ecology

### *Appellant's Statements of Evidence:*

- 14 Mr Denney – Landscape and visual, including summary
- 14a Mr Denney's rebuttal to Mr Hart and Mr Howell
- 15 Mr Denney – appendices 1 – 15 (Design Statement appendix 10: separately bound)
- 16 Dr Gibson (Mr Woodfield) - ecology
- 16a Dr Gibson's rebuttal to Drs Latimer, Hockaday and Prof Parkinson
- 17 Mr D R Moore – Nawt Fawr Ecological and Education Trust, including Charitable Trust Deed (17a)

- 18 Mr R Barnes – water-sports opportunities
- 19 Prof T Stevens – recreational and amenity opportunities
- 19a Prof T Stevens rebuttal to Mr J Hart
- 19b Prof T Stevens rebuttal to Mr S Howell
- 20 Prof T Steven’s appendices 1-11
- 21 Mr T G Swanson
- 22 Mr P Waldren - RPS
- 22a Mr P Waldren’s rebuttal to Dr Hockaday
- 23 Mr P Waldren’s appendices 1-6
- 24 Mr M Axon – Savell Bird & Axon - Highways
- 24a Mr Axon’s rebuttal to Mr Dawson
- 24b Mr Axon’s rebuttal to Mr Evans
- 24c Mr Axon’s rebuttal to Mr Cooper
- 25 Mr Axon’s appendices A-C
- 26 Mr Axon’s rebuttal to Mr Kelly

*Reservoir Action Group’s Statements of Evidence*

- 27 Mr Thurgood RAG TT 1
- 28 Ewart Parkinson
- 29 Mr G Good
- 30 Mr J G Evans
- 31 Mr F Davies CRFFC 1

**DOCUMENTS SUBMITTED BY THE COUNCIL – CCC/...**

- 1 Cardiff Bay Wetlands Reserve leaflet
- 2 Comparisons with Cosmeston Lakes, Llandegfedd reservoir and Eglwys Nunydd
- 3 Cardiff Bay Wetlands Reserve summary May 2008
- 4 Penarth Yatch Club website printout
- 5 Cosmeston Lakes Country Park website printout
- 6 Extract of cross sections from Design Statement indicating exposure of houses
- 7 CCC & Wildlife Trust S & W Wales email 12 May 2008
- 8 Joint Housing Land Availability study May 2008
- 9 Dr Latimer: Summary water quality parameters
- 10 Mr Howell: Use of Cardiff Bay for leisure activities
- 11 Extracts : Ornithological handbook

- 12 Cardiff Local BAP & Reedbed Habitat Action Plan (HAP):
- 12a Local BAP/HAP status
- 13 Letters Engineer John Sawyer & S Howell 9 June 2008
- 14 Reservoirs inspection report Certificate April 1994
- 15 Reservoirs inspection report March 2004
- 16 Map: The greatest feat of civil engineering in 19<sup>th</sup> century
- 17 Jointly produced interpretation of NFPA playing space requirement
- 17a Appendix to 17 – the differences between parties
- 18 Draft conditions
- 19 Comments on Unilateral Undertaking
- 20 Briefing note: Cardiff Crown Court - tenancy ruling
- 21 Email attachment relating to insurance for reservoir

### **DOCUMENTS SUBMITTED BY RESERVOIR ACTION GROUP (RAG)**

- 1 Booklet: The Nant Fawr Woodlands
- 2 CD: Millennium Video – A Community Treasure
- 3 Photographs submitted by Mr Ewart Parkinson
- 4 Email exchange between Mr Good, Mr Dawson and PC Daniels
- 5 Bay Safety: Harbour Authority's pamphlet
- 6 Bay water quality – email :Cllr Howells to Jenny Randerson AM
- 7 Manual for Streets (MfS): TRL research report 661
- 8 Traffic Impact Guidelines

### **DOCUMENTS SUBMITTED BY APPELLANT: CD/...**

#### **FILE 1: Planning policy**

- 13 Planning Policy Wales (March 2002)
- 13a Planning Policy Wales Companion Guide
- 14 Wales Spatial Plan (November 2004)
- 15 Wales Spatial Plan Update Consultation (2008)

#### **FILE 2:**

- 16 City of Cardiff Local Plan (January 1996)

#### **FILE 3:**

- 17 South Glamorgan (Cardiff Area) Replacement Structure Plan 1991-2011
- 18 Deposit Cardiff Unitary Development Plan (to 2016) (October 2003)
- 19 Cardiff Local Development Plan 2006-2021. Preferred Strategy Report (October 2007)

- 20 Cardiff County Council Supplementary Planning Guidance on Biodiversity PART 1 (2006)
- 21 Cardiff County Council Supplementary Planning Guidance on Biodiversity PART 2 (2006)
- FILE 4:**
- 22 Cardiff County Council Open Space Supplementary Planning Guidance (June 2000)
- 23 Cardiff County Council Open Space Supplementary Planning Guidance (March 2008)
- 24 Cardiff County Council Supplementary Planning Guidance on Waste Collection and Storage Facilities (March 2007)
- 25 Cardiff County Council Supplementary Planning Guidance on Access Circulation and Parking Requirements (June 2006)
- 26 Cardiff County Council Supplementary Planning Guidance on Development Contributions to School Facilities (March 2007)
- 27 Cardiff County Council Supplementary Planning Guidance on Energy Efficient Designs for New Residential Development (December 1995)
- 28 Cardiff County Council Supplementary Planning Guidance – Cardiff Residential Design Guide (2008)
- 29 Cardiff County Council Supplementary Planning Guidance for Affordable Housing (March 2007)
- 30 Cardiff County Council Supplementary Planning Guidance for Community Facilities and Residential Development (March 2007)
- 31 Cardiff County Council Supplementary Planning Guidance on Trees and Development (March 2007)
- 32 Cardiff County Council Supplementary Planning Guidance on Public Rights of Way and Development (October 2006)
- 33 Technical Advice Note 1: Joint Housing Land Availability studies (2006)
- 34 Technical Advice Note 2 Planning and Affordable Housing (2006)
- 35 Technical Advice Note 3 Simplified Planning Zones (1996)
- FILE 5:**
- 36 Technical Advice Note 4 Retailing and Town Centres (1996)
- 37 Technical Advice Note 5 Nature Conservation and Planning (1996)
- 38 Technical Advice Note 6 Agriculture and Rural Development (June 2000)
- 39 Technical Advice Note 7 Outdoor Advertisement Control (1996)
- 40 Technical Advice Note 9 Enforcement of Planning Control (1997)
- 41 Technical Advice Note 10 Tree Preservation Orders (1997)
- 42 Technical Advice Note 11 Noise (1997)
- 43 Technical Advice Note 12 Design (2002)
- 44 Technical Advice Note 13 Tourism (1997)
- 45 Technical Advice Note 14 Coastal Planning (1998)
- 46 Technical Advice Note 15 Development and Flood Risk (2004)

- 47 Map ST18SE – TAN 15 Development and Flood Risk
- 48 Technical Advice Note 16 Sport and Recreation (1996)
- 49 Technical Advice Note 18 Transport (2007)
- 50 Technical Advice Note 19 Telecommunications (2002)
- 51 Technical Advice Note 20 The Welsh Language – Unitary Development Plans and Planning Control (June 2000)
- 52 Technical Advice Note 21 Waste (November 2001)
- 53 Welsh Office Circular 11/99 – Environmental Impact Assessment (EIA)
- 54 PPG 12 (Wales) February 1992
- 54a Ministerial Interim Planning Policy Statement 01/2006 Housing

**FILE 6: Legislation**

- 55 Air Quality (Wales) Regulations 2000
- 56 Air Quality (Wales) Amendment Regulations 2002
- 57 Reservoirs Act 1975
- 58 Wildlife and Countryside Act 1981 (as amended)
- 59 Countryside and Rights of Way Act 2000
- 60 The Conservation (Natural Habitats etc) Regulations 1994
- 61 Cardiff Bay Barrage Act 1993 (extract)

**FILE 7: The planning application**

- 62 List of Appeal Documents
- 63 Planning Appeal Form
- 64 Planning Application to Cardiff County Council 12<sup>th</sup> May 2006 (covering letter attaching Planning Obligation Schedule, Suggested Conditions and Draft Management Plan)
- 65 Completed Application Forms with Completed Certificate B
- 66 Plans Ref P02 (red line) P03 (demolition/tree removal), SK22 (sections) and NE 02103/24/6 (junction improvements)
- 67 Site Boundary Plan – Figure S1.2
- 68 Letter from Ian Whittaker, Cardiff County Council dated 17 July 2006, and enclosures requesting further information
- 69 Letter from Peter Waldren, RPS dated 16 August 2006 enclosing: Environmental Statement incorporating further information; updated management statements and highway draining (now superseded)
- 70 Email from Ian Whittaker, Cardiff County Council dated 4 October 2006 requesting further information
- 71 Letter from Peter Waldren, RPS dated 13 October 2006 enclosing the First Addendum to the ES and the Reservoir Panel Engineer's Report
- 72 Letter from Ian Whittaker, Cardiff County Council dated 29 November 2006 requesting further information

- 73 Letter from Peter Waldren, RPS dated 20 December 2006 extending the period for determination up to 4 March 2007
  - 74 Letter from Peter Waldren, RPS dated 16 February 2007 enclosing the Second Addendum to the ES (see below)
  - 75 Email from Polly Ellis, Cardiff County Council 24 November 2006
  - 76 Letter from WPD 27 November 2006
  - 77 Letter from Polly Ellis, Cardiff County Council 11 December 2006
  - 78 Letter from RPS to Cardiff County Council 4 January 2007
  - 79 Letter from Geldards LLP to Cardiff County Council 18 January 2007 enclosing Notice under S25 of the Landlord and Tenant Act 1954
  - 80 Letter from Kate Berry, Cardiff County Council to the Planning Inspectorate 23 February 2007
  - 81 Letter from Geldards LLP to the Planning Inspectorate 26 February 2007
  - 82 Letter from Planning Inspectorate to Cardiff County Council 5 March 2007
  - 83 Letter from Planning Inspectorate to Geldards LLP 6 March 2007
  - 84 Letter from Geldards LLP to the Planning Inspectorate 6 March 2007
  - 85 Email from RPS to Cardiff County Council of 6 March 2007 and reply from Cardiff County Council of 9 March 2007
  - 86 Letter from Polly Ellis, Cardiff County Council to the Planning Inspectorate 9 March 2007
  - 87 Email from Geldards LLP to Cardiff County Council 12 March 2007
  - 88 Letter from Planning Inspectorate to Geldards LLP 12 March 2007
  - 89 Email from Geldards LLP to Cardiff County Council 12 March 2007
  - 90 Letter from Geldards LLP to Cardiff County Council 26 March 2007
  - 91 Email from Geldards LLP to Cardiff County Council 26 March 2007
  - 92 Letter from Polly Ellis, Cardiff County Council to Geldards LLP 30 March 2007
  - 93 Letter from Geldards LLP to Cardiff County Council 3 April 2007
  - 94 Email from Geldards LLP to Cardiff County Council 3 April 2007
  - 95 Letter from Polly Ellis, Cardiff County Council to Geldards LLP 5 April 2007
  - 96 Environmental Statement Vol 1 (April 2008)
  - 97 Environmental Statement Vol 2 (April 2008)
  - 98 Non-Technical Survey (April 2008)
  - 99 Cardiff County Council Report to Committee
  - 100 Cardiff County Council letter – notifying Committee decision
- FILE 8:**
- 100A Letter from Geldards LLP to CCC dated 26<sup>th</sup> March 2007
  - 100B Decision Letter from CCC to Geldards LLP dated 30<sup>th</sup> March 2007
  - 100C Letter to CCC from Geldards LLP dated 3<sup>rd</sup> April 2007

- 100D Letter to Geldards LLP from CCC dated 5<sup>th</sup> April 2007
- 100E Letter from WAG to Geldards LLP dated 26<sup>th</sup> July 2007
- 100F Letter from Geldards LLP to the WAG dated 27<sup>th</sup> July 2007 enclosing Figures 13.14 and 13.15
- 100G Email from Geldards LLP to the WAG dated 9<sup>th</sup> August 2007
- 100H Letter from WAG to Geldards LLP dated 17<sup>th</sup> August 2007
- 100I Letter from RPS to CCC dated 4<sup>th</sup> September 2007 with S106 Heads of Terms

**Previous applications**

- 100J Cardiff County Council Committee Report (Application 2)
- 100K Cardiff County Council's Decision Letter (Application 2)
- 101 Letter from the Welsh Assembly Government to Geldards LLP 15<sup>th</sup> August 2007 (Application 2)
- 102 Planning Inspector's Report dated 19<sup>th</sup> March 2007 APP/Z6815/A/05/1194945 (Application 2)
- 102A Cardiff County Council Committee Report (Application 1)
- 102B Cardiff County Council's Decision Letter (Application 1)

**Countryside Council Wales correspondence and documentation**

- 103 Notification of Llanishen and Lisvane Reservoir Embankment SSSI
- 104 Notification of Lisvane Reservoir SSSI
- 105 CCW Guide – Management Planning for SSSIs, Natura 2000 Sites and Ramsar Sites (May 2003)
- 106 Agreement between CCW and WPD pursuant to S39 of the Wildlife and Countryside Act 1981 dated 11<sup>th</sup> October 2004
- 107 Letter dated 11<sup>th</sup> January 2008 from CCW to WPD enclosing Management Statement concerning Lisvane Reservoir SSSI
- 108 Lisvane Reservoir SSSI – Your Special Site and its Future

Correspondence with CCW re fencing / S39 variation / draft management plan

- 109 Letter dated 24<sup>th</sup> March 2006 from Geldards LLP to CCW
- 110 Letter dated 4<sup>th</sup> April 2006 from CCW to Geldards LLP
- 111 Letter dated 6<sup>th</sup> April 2006 from Geldards LLP to CCW
- 112 Letter dated 10<sup>th</sup> July 2006 from CCW to Geldards LLP
- 113 Letter dated 30<sup>th</sup> August 2006 from WPD to CCW
- 114 Letter dated 27<sup>th</sup> September 2007 from CCW (Mr Couchman) to RPS
- 115 Letter dated 27<sup>th</sup> September 2007 from CCW (Dr Howard) to RPS
- 116 Letter dated 31<sup>st</sup> October 2007 WPD to CCW
- 117 Letter dated 6<sup>th</sup> December 2007 from Geldards LLP to CCW
- 118 Letter dated 17<sup>th</sup> December 2007 from CCW to Geldards LLP
- 119 Emails from Geldards LLP to CCW dated 16<sup>th</sup> January 2008 and 29<sup>th</sup> January 2008
- 120 CCW Consent to Operations dated 25<sup>th</sup> February 2008

- 121 Letter dated 10<sup>th</sup> April 2008 from Geldards LLP to CCW
- 122 Draft Variation Agreement between CCW and WPD (not agreed)
- 123 Proposed Management Plan (for use with S106)
- 123A Letter from CCW to Geldards LLP dated 24<sup>th</sup> April 2008  
CCW representations concerning proposed development at Llanishen
- 124 Letter dated 6<sup>th</sup> June 2006 from CCW to the CCC
- 125 Letter dated 14<sup>th</sup> June 2006 from CCW to the CCC
- 126 Letter dated 16<sup>th</sup> June 2006 from CCW to the CCC
- 127 Letter dated 4<sup>th</sup> July 2006 from CCW to the CCC
- 128 Letter dated 14<sup>th</sup> September 2006 from CCW to the CCC
- 129 Letter dated 15<sup>th</sup> September 2006 from CCW to the CCC
- 130 Letter dated 22<sup>th</sup> November 2006 from CCW to the CCC
- 131 Letter dated 10<sup>th</sup> April 2007 from CCW to the CCC
- 132 Letter dated 29<sup>th</sup> October 2007 from CCW to the Planning Inspectorate with appendices
- 132A Letter dated 10<sup>th</sup> April 2008 from CCW to the Planning Inspectorate  
Miscellaneous correspondence from CCW
- 133 Letter dated 13<sup>th</sup> July 2007 from CCW to WPD granting consent for operations (mowing)
- 134 Various email correspondence between CCW and Charlie Gibson of Bioscan including an email dated 30<sup>th</sup> August 2007 attaching a proposed 2007 Glamorgan mycological survey work. Note of meetings re proposed survey work also included
- 135 Letter dated 14<sup>th</sup> September 2007 from Bioscan to WPD
- 136 Letter dated 27<sup>th</sup> September 2007 from CCW to the RPS
- FILE 9: Sailing and Water Quality**
- 137 Cardiff Harbour Authority brochure - Cardiff Bay Water Activity Centre leaflet
- 138 Cardiff Bay Yacht Club web page including training news and AGM information
- 139 Tiger Bay Training web page  
Correspondence with Cardiff Harbour Authority and CCC re sailing and water quality
- 140 Email from Simon Howell to Sue Harrigan dated 25<sup>th</sup> January 2007
- 141 Letter to Simon Howell dated 23<sup>rd</sup> May 2007 from Geldards LLP
- 142 Letter from Simon Howell dated 29<sup>th</sup> June 2007 to Geldards LLP
- 143 Letter from Geldards LLP to Simon Howell 27<sup>th</sup> July 2007
- 144 CCC internal memorandum by Paul Jenkins dated 8<sup>th</sup> June 2004
- 145 Letter from Simon Howell dated 21<sup>st</sup> August 2007 to Geldards LLP
- 146 Printout from CCC website showing Freedom of Information requests and responses concerning Cardiff Bay's water quality prediction system

- 147 Printout of Cardiff Harbour Authority's website re water quality
- 148 Note to Inspector (at Application 2 Inquiry) concerning Llanishen Sailing and Watersports – RPS, 15.11.2006
- 149 Cardiff Council leaflet on Cardiff Bay
- 150 Supplementary Report on Sailing and Leisure Facilities in South Wales (prepared for Inquiry into Application 2)
- 151 Lease dated 7<sup>th</sup> June 1996 between Dwr Cymru Cyfyngedig and The Council of the City and County of Cardiff
- 152 Cardiff Harbour Authority – Water activities in Cardiff
- 153 Cardiff Harbour Authority brochure - Llanishen Sailing Centre
- 154 Llanishen Sailing Centre – Summary of Courses offered 2003 (produced by Dr Terry Stevens in 2006 for Application 2 Inquiry)
- 155 Adventure Cardiff Brochure detailing Sailing and other courses at Cardiff Bay and Llanishen
- 156 Water Sports Table (produced by Dr Terry Stevens in 2006 for Application 2 Inquiry)
- 157 Advisory Note of Mr Barker (produced in 2006 for Inquiry into Application 2)
- 158 Schedule of Sailing Venues in South Wales
- 159 Wind data published by the Met Office St Athan 2005 – 2007

**FILE 9A**

- 160 Cardiff Harbour Authority Water Quality Monitoring Reports 2003 – 2006 files 9A – 9D

**FILE 10: Transport**

- 161 Map of Cardiff Public Transport
- 162 County Council of the City and County of Cardiff Local Transport Plan 2006-2016 (main text)
- 163 County Council of the City and County of Cardiff Local Transport Plan 2006-2016 (Appendices)
- 164 Manual for Streets published by the Dept. for Transport 2007

**FILE 11:**

- 164A Traffic Impact Assessment (separately bound document)

**Representations from the Environment Agency Wales (EAW)**

- 165 Letter from EAW to CCC dated 13<sup>th</sup> June 2006
- 166 Letter from EAW to CCC dated 6<sup>th</sup> September 2006
- 167 Letter from EAW to CCC dated 13<sup>th</sup> April 2007
- 168 Letter from EAW to CCC dated 18<sup>th</sup> July 2007

**Section 106 Unilateral Undertaking Correspondence**

- 169 Emails dated 12<sup>th</sup> March 2007 between Geldards LLP and CCC
- 170 Letter from Geldards LLP to CCC dated 26<sup>th</sup> March 2007
- 171 4 emails dated 14<sup>th</sup> and 15<sup>th</sup> May 2007 between Geldards LLP and CCC
- 172 Letter from Geldards LLP to CCC dated 24<sup>th</sup> July 2007

- 173 Letter to Geldards LLP from CCC dated 30<sup>th</sup> July 2007
- 174 Letter from Geldards LLP to CCC dated 7<sup>th</sup> August 2007
- 175 Letter to Geldards LLP from CCC dated 5<sup>th</sup> October 2007
- 176 Letter from Geldards LLP to CCC dated 16<sup>th</sup> October 2007
- 177 Letter from WPD to Mr Andy Hughes Director of Dams and Water Resources at Atkins Ltd dated 3<sup>rd</sup> December 2007

**Miscellaneous**

- 178 Correspondence between WPD and CCC re the possibility of CCC purchase of the Site including three letters dated 29<sup>th</sup> February 2008, 5<sup>th</sup> May 2004 and 11<sup>th</sup> May 2004
- 179 E mail from Charl Oosthuizen to Rowland Davies – 15.11.2006
- 180 Application 2 Master Plan – job reference DHL 2261 (Document number APP100 at Application 2 Inquiry)
- 181 Certificate of Incorporation – The Wildlife Trust of South and West Wales Limited
- 182 Letter from Hyder Consulting dated 31<sup>st</sup> October 2006 attaching Engineer’s Report
- 183 Map indicating geographical concentrations of Grassland Fungi – figure 31 A
- 184 CCC document – Delivering Regeneration Promises
- 185 Representation Form – Cardiff Unitary Development Plan (to 2016) – Deposit
- 186 Letter to The Development Plan Team, Cardiff Council from Peter Waldren, dated 8<sup>th</sup> June 2006
- 187 Letter to Strategic Planning Manager, Cardiff Council from Mark Roberts, dated 14<sup>th</sup> March 2006
- 188 Cardiff Council leaflet re Nant Fawr corridor
- 189 Cardiff Cycling Campaign response to Rights of Way Improvement Plan
- 190 Contour Map of the Development Site
- 191 Llanishen Water “Extent of Topo Surveys figure
- 192 Correspondence between Geldards LLP and Geraint Evans of Bureau including letters dated 9<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup> and 17<sup>th</sup> April 2008
- 193 Llanishen Reservoir Scheme Changes Application 4 dated 2<sup>nd</sup> April 2008
- 194 Cardiff Parks Questionnaire Prepared by Cardiff Research Centre October 2004
- 195 Cardiff Parks Questionnaire Face to Face Analysis September 2004
- 196 Leisure and Lifelong Satisfaction survey April 2005
- 197 High Court Judgement dated 26<sup>th</sup> January 2007
- 197A Letter dated 21<sup>st</sup> April 2008 from CCC re Consultation Exercise: Draft Supplementary Planning Guidance - Amendments to Biodiversity Part 2: The Cardiff Resource
- 197B Amendments to Biodiversity Part 2: The Cardiff Resource

**FILE 12: Landmap Studies**

- 198 Cardiff Landmap Study Geological Landscape Layer December 2007

199 Landscapes Working for Cardiff History and Archaeology Aspect December 2007

200 Cardiff Landmap Study Cultural Associations Aspect September 2007

201 Cardiff Landmap Study Visual and Sensory January 2008 – Technical Annex

202 Landmap for Cardiff (Landscape Habitats Layer)

**FILE 13: Recreation Documents**

203 Green Exercise: Complementary Roles of Nature, Exercise and Diet in Physical and Emotional Wellbeing and Implications for Public Health Policy March 2003

204 Booklet Adventure Cardiff 2008

205 Plans 1-9 showing alternative sailing facilities

206 Climbing Higher – the Welsh Assembly Government Strategy for Sport and Physical Activity January 2005

207 Article from the Biologist dated June 2006 entitled Green Exercise: The Benefits of Activities in Green Places written by Jules Pretty, Rachel Hine and Jo Peacock from the University of Essex

208 Sailing statistics from the 2004/05 Adult Participation Survey

209 Website print out: Recreation Documents Upton Warren Outdoor Education Centre

210 Website print out re: Wanlip Sailing Club

211 Website print out re: the Bristol Sailing School

212 Website print out re: Cam Sailing Club

213 Website print out re: Welbeck Sailing Club

214 Website print out re: Vale of Glamorgan – Cosmeston Lakes

215 Website print out re: Bristol Avon Sailing Club

216 Website print out re: Telford Sailing Club

217 Website print out re: Denholme Sailing Club

218 Website print out re: Baltic Wharf Sailing Club, Bristol

219 Website print out re: Priorslee Lake Wildlife Site

220 Website print out re: Saddington Sailing Club

222 Website Printout : Welsh Sailing Organisation - List of Sailing Clubs in South Wales

223 Website Printout: Cardiff Bay Yacht Club

224 Website Printout: Cardiff Yacht Club

225 Website Printout : Corus Sailing Club

226 Website Printout: Llandegfedd Sailing Club

227 Website Printout : Llangorse Sailing Club

228 Website Printout: Mumbles Sailing Club

229 Website Printout: Penarth Sailing Club

230 Report to Newport City Council's Overview and Scrutiny Forum – Culture and Recreation date 18<sup>th</sup> May 2007

231 Plan of Cosmeston Lake printout from Vale of Glamorgan website

**FILE 14:**

232 Wales Audit Office Public Access to the Countryside November 2006

233 Local Biodiversity Action Plan

234 Climbing Higher Next Steps July 2006

235 Guidance Notes for Inspection of UK based RYA Training Centres

236 Sports Council for Wales Adult Sport Participation and Club Membership Surveys

237 Good Practice in the Planning and Management of Sport and active recreation in countryside published by the Sports Council and the Countryside Commission

**FILE 15: Material added pre-inquiry post exchange of Proofs - Various Documents**

239 Witness statement of Daniel Charl Oosthuizen (WPD) in relation to separate lease proceedings

240 Witness statement of Simon Howell (CCC) in relation to separate lease proceedings

241 Witness statement of Christopher Hadfield (CCC) in relation to separate lease proceedings

242 Planning permissions 08/00410/E and 08/00412/E together with related Committee Reports and Minutes in respect of temporary buildings at Llanishen Sailing Centre

243 Photographs A-K showing Cardiff Bay together with aerial photographs L-Q of the Bay

244 A. Report by Atkins on Lisvane Reservoir dated May 2008

B. Report by Atkins on Llanishen Reservoir dated May 2008

C. Statutory certificate re inspection of Lisvane Reservoir

D. Statutory certificate re inspection of Llanishen Reservoir

245 Public Access to Open Reservoirs by Water UK May 1999

**FILE 16:**

246 Vale of Glamorgan Council leaflet on Cosmeston Lakes

247 Email from Peter Waldren of RPS to Charles Felgate of Geldards LLP dated 13<sup>th</sup> May 2008 forwarding email from Ian Whittaker to Peter Waldren dated 15<sup>th</sup> June 2004

248 Letter from CCC to Savell Bird and Axon dated 16<sup>th</sup> April 2008 concerning Keepers Cottage Lane bollards

249 Letter to Peter Waldren from CCC dated 22<sup>nd</sup> April 2008

250 Letter from Peter Waldren RPS to CCC dated 2<sup>nd</sup> May 2008

251 Air Quality Assessment Llanishen Reservoir Cardiff County Council May 2008

252 Preliminary Report on Toad Survey of Llanishen Reservoir Cardiff April 2008

253 Open Space Assessment Cardiff County Council

254 CCW Regional Report No CCW/SEW/08/2 – Waxcap mycota in Glamorgan

255 OFWAT consent to disposal of reservoirs dated 20<sup>th</sup> March 2003

256 Consultation on draft revised TAN 5 Nature Conservation and Planning January 2006

257 Consultation on draft revised TAN 16 Sport Recreation and Open Space July 2006

- 258 Cardiff County Court Judgement dated 12<sup>th</sup> May 2008 in the matter of CCC and WPD
- Submitted during the Inquiry**
- 259 Article entitled "The effects of car traffic on breeding bird populations in woodland" by various authors from the Journal of Applied Ecology 1995
- 260 Watersports Participation 2003 RYA
- 261 RAG website
- 262 Memorandum from Simon Howell dated 26<sup>th</sup> July 2006
- 263 Photographs of Channel View
- 264 Letter dated 28<sup>th</sup> February 2007 from Wildlife Trust S&W Wales to WPD
- 265 Letter dated 23<sup>rd</sup> May 2008 to PINS from solicitors for Wildlife Trust S&W Wales
- 266 Minutes from the Friends of Nant Fawr
- 267 Plan showing the recreation area of the Nant Fawr corridor
- 268 Management Agreement dated 7<sup>th</sup> May 2008 between WPD and Wildlife Trust of S&W Wales
- 269 A – Transport and Traffic Statement of Common Ground Option A  
B – Transport and Traffic Statement of Common Ground Option  
C – Revised Transport and Traffic Statement of Common Ground Option C  
D - Statement of Common Ground
- 270 Letter Friends of Nant Fawr to Planning Inspector Nixon dated 11<sup>th</sup> November 2006 (Scheme 2 Inquiry)
- 271 Reedbed Habitat Action Plan
- 272 RPS Note 27<sup>th</sup> May 2008 re sailing and facilities at Cosmeston Lake
- 273 Additional RPS Note 27<sup>th</sup> May 2008 re sailing and facilities at Cosmeston Lake
- 274 Nant Fawr Ecology and Education Trust written resolution of Trustees dated 23<sup>rd</sup> May 2008
- 275 Edge treatment photographs
- 276 Cosmeston Lakes Country Park photographs
- 277 Email from Savell Bird and Axon to Peter Dawson re Traffic Flow Clarity dated 29<sup>th</sup> May 2008 with attachments: Figures 14 - 16 (29<sup>th</sup> May 2008) & MA101 – MA106
- 278 Mr Dawson's measured Data (Lisvane and Llanishen Area)
- 279 Mike Axon Rebuttal Proof to Mr Dawson's evidence (also as ID24A)
- 280 CCC Freedom of Information response RFI 372
- 281 Illustrative plan YOR 1257\_30-1 with dimensions added
- 282 Note by Geldards LLP regarding instructions sent to reservoir engineer
- 282A Email from reservoir engineer Andy Hughes to Geldards LLP dated 3<sup>rd</sup> June 2008
- 283 Brian Denney replacement page 5 of his appendix 5
- 284 Drawing no. L2785A (Lighting)

- 285 Joint Statement CCC/WPD re the Joint Housing Land Availability Study
- 286 Llanishen Water Site Measurements produced by Brian Denney
- 287 Witness Background and Qualifications Mr Woodfield
- FILE 17:**
- 288 Vale of Glamorgan website printout – Action for Reedbeds
- 289A Reedbeds Action Plan pubd. on the Vale of Glamorgan website
- 289B Species Action Plan – Bittern pubd. on the Vale of Glamorgan website
- 290 Qualifications and Experience of Professor David Hill
- 291 Article on Potamogeton Perfoliatus
- 292 Article on Nitella Flexilis
- 293 Letter dated 2<sup>nd</sup> June 2008 to PINS from the Nant Fawr Ecology and Education Trust
- 294 Photos of Ardal Cadwraeth Conservation Area.
- 295 Emails between Charles Felgate and Andy Hughes of Atkins dated 5<sup>th</sup> June 2008 and 6<sup>th</sup> June 2008
- 296 Letter to PINS from the Wildlife Trust for South and West Wales dated 5<sup>th</sup> June 2008
- 297 Rebuttal from Mike Axon in respect of Mr Kelly’s evidence (also as ID26)
- 298 Email dated 10<sup>th</sup> June 2008 re heads of terms with Cardiff Bus
- 299 Plan showing indicative 400m bus route catchment
- 300 Indicative route for new bus service
- 301 North Cardiff Peripheral Cycle Route
- 302 Map showing CF14 postcode area
- 303 Traffic Management Proposals
- 304 Photograph of Lisvane Road
- 305 Photograph of Llanishen Reservoir embankment
- 306 RPS note detailing S106 contributions
- 307 Local Facilities and 2km isochrone Figure MA203
- 308 Emails between Andy Hughes and Geldards LLP
- 309 Welsh Office Circular 13/97
- 310 Note by Geldards LLP to the Inspector regarding a mail drop concerning Traffic Option C dated 12<sup>th</sup> June 2008
- 311 Briefing Note – Claim number 7CF05089 in the Cardiff County Court between CCC and WPD June 2008
- 312 CCC letter dated 12<sup>th</sup> August 2008 re dismissal of Town Village Green Application and Inspector’s Report
- 313 CCW letter to PINS dated 19<sup>th</sup> August 2008
- 314 Report by Fireburn Consultancy Ltd dated 5<sup>th</sup> August 2008

- 315 List of Plans for determination
- 316 Comparison Plan Cosmeston Lake and Llanishen Lake
- 317 Letter from CCC to PINS 23 June 2008 (S106)

**STATEMENTS & DOCUMENTS SUBMITTED BY THIRD PARTIES: TP/....**

- 1 Statement of Mr D G Evans
  - 2 Statement of Mr J Cooper
  - 3 Mr Cooper extract: Welsh Transport planning and appraisal guidance: Feb 2007, section 4.3
  - 4 Mr Cooper extract: MfS pages 12/17
  - 5 Mr Cooper extract: Transport Planning Appraisal Guidance (TAG) costs of delay
  - 6 Mr Cooper extract: Welsh Transport planning and appraisal guidance: Feb 2007, section 5.1, 5.2.2, One Wales transport strategy
  - 7 Mr Cooper extract: Outline of the regional transport plan table 3.13
  - 8 Mr Cooper: Map of major facilities and retail outlets
  - 9 Mr Cooper: Bus timetables
  - 10 Statement of Lisvane Community Council
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