

Adran yr Economi a'r Seilwaith
Department for Economy and Infrastructure



Llywodraeth Cymru
Welsh Government

This document is an update to the 'Proof of Evidence – Chief Witness' document WG 1.1.1. It contains an update following the addition of the bridge protection measures in the DRAFT AMENDMENT (NO.2) SCHEME ORDER and a general update on the works to address the allegation of serious detriment upon Newport Docks by Associated British Ports (ABP).

Scheme Evidence Update

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Welsh Government, Planning and Sustainable Development

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1. AUTHOR

- 1.1 My name is John Davies. I currently work as a self-employed planning consultant under the title 'John Davies Planning' as a sole trader. My professional qualifications are set out in my main proof of evidence.
- 1.2 The evidence provided in this Scheme Evidence Update has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2. SCOPE AND PURPOSE OF THIS PROOF OF EVIDENCE

2.1 This Scheme Evidence Update brings up to date my original evidence for the Welsh Government's Scheme in respect of Newport Docks.

2.2 This update supersedes my previous evidence in respect of all matters concerning Newport Docks. The following sections of my original evidence are withdrawn and replaced with this evidence:

John Davies Planning & Sustainable Development Main Evidence
(WG 1.23.1)

Paragraphs 175 to 191, pages 71-77; paragraph 196, page 79; and paragraph 247, page 99

2.3 In order to reach conclusions I draw on the updated evidence of other witnesses specifically Mr Matthew Jones, Mr Stephen Bussell, Mr Ben Sibert, Mr Andrew Meaney, Mr Barry Woodman, Dr Peter Ireland, Mr Andy Clifton and Mr Jonathan Vine.

2.4 My evidence is presented in the following structure:

1. Author
2. Scope and Purpose of this Proof of Evidence
3. Scheme Evidence Update

3. SCHEME EVIDENCE UPDATE

3.1. The Bridge Protection Measures and Works to Address the Impact on Newport Docks

Bridge Safety

- 3.1.1. The Welsh Government has worked with Associated British Ports (ABP) to reduce the residual risk of a ship impact on the River Usk Crossing where it passes over the Junction Cut.
- 3.1.2. The Environmental Statement Supplement (ESS) issued in April 2017 sets out proposals to protect the River Usk Bridge. The draft supplementary (No. 3) Compulsory Purchase Order published in May 2017 deals with the rights to construct and maintain those measures, which would have extended Junction Cut but retained its existing width of some 19.5metres.
- 3.1.3. Following further discussions with ABP the proposed bridge protection measures have been revised. They now comprise extending the Junction Cut (within the South Dock only) but narrowing it to 11.0 metres wide at its southern end and revising the entry parameters and protocols for ships entering the North Dock.
- 3.1.4. To obtain the rights to construct and maintain the latest bridge protection measures the Welsh Government has published:
- a) A modification to the draft supplementary (No.3) Compulsory Purchase Order (CPO) to remove areas of land, in the vicinity of the Junction Cut, which are no longer required for the bridge protection measures;
 - b) A draft supplementary (No. 4) CPO to acquire the additional land required to construct the narrowing of the Junction Cut; and
 - c) An amendment to the Scheme Order to narrow the navigable waters of the Junction Cut.

- 3.1.5. Whilst the effect would be to narrow the Junction Cut to 11 metres at its southern end, the Welsh Government is working with ABP to ascertain whether the maximum width for the Cut could be increased to 13.5 m whilst still ensuring the safety of the bridge and dock and shipping personnel.
- 3.1.6. The evidence of Mr Matthew Jones, Mr Ben Sibert and Mr Jonathan Vine¹ describes in detail the mitigation measures to address the risk of ship impact with the River Usk Bridge. These measures are the subject of the draft Supplementary (No 4) Compulsory Purchase Order.
- 3.1.7. Mr Jones, Mr Sibert and Mr Vine also explain the background to discussions with ABP regarding the minimum width of the Junction Cut, which could result in an increased width around 13.5 metres rather than 11 metres, enabling larger vessels to enter the North Dock. They describe the additional management measures likely to be necessary to ensure bridge safety with a 13.5 metres width. However, discussions are still ongoing with ABP.

Works to Address the Impact on Newport Docks

- 3.1.8. Since the publication of the original draft Orders for the Scheme, the Welsh Government has discussed with ABP the impact on its operations at Newport Docks and proposes the following works to address this impact:
- a) The phased creation of approximately 303m of new quay on the north side of South Dock;
 - b) Refurbishment of 250m of quay on the south side of South Dock (at the eastern end of the Coal Terminal);
 - c) Provision of a moveable bridge to facilitate mobile harbour cranes, other port equipment and HGV's to cross the extended Junction Cut between North and South Docks; and

¹ WG 1.1.8, WG 1.5.7 & WG 1.22.5

- d) Preparation of areas of land and provision of premises to facilitate the relocation of ABP, tenants and occupiers of the port that are affected temporarily and permanently by the scheme, including site preparation, new buildings, hardstandings and infrastructure.

3.2. The Impact of the Scheme on Newport Docks

- 3.2.1. ABP, the owners and operators of Newport Docks, object to the proposed new motorway route chiefly on grounds of the headroom restriction resulting from the new bridge across the River Usk and Docks; the loss of land within the operational docks area, and the division of the Port into separate areas by the Scheme. They are concerned about the impact on the Port of Newport Master Plan 2015-2035 (M/Plan)². Other significant issues are the protection of the new motorway bridge against the impact of large ships, and the handling of explosives through the Docks.
- 3.2.2. ABP has made representations to the Secretary of State for Transport under Section 16(2) of the Acquisition of Land Act 1981. This provides that a compulsory purchase order that includes land owned by a statutory undertaker used for carrying on the undertaking shall not be confirmed unless the appropriate Minister is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking. ABP maintains that the Scheme would cause serious detriment to the operation of Newport Docks.

Policy Framework

- 3.2.3. The M/Plan describes Newport Docks as Wales' leading general cargo port and the second largest conventional steel handling port in the UK. The M/Plan states that in 2014 the port handled in excess of 1.85 million tonnes of cargo, contributing £186m to the Welsh economy and supporting 3000 direct and indirect jobs. In the 20 years up to 2014, cargo handled at the port increased by 40%, although

² Doc ABP12/H

compared with the 2014 figure of 1.85m tonnes, the highest figure was 3.15m tonnes in 2006, prior to the 2008/9 global economic downturn.

- 3.2.4. Policy and regulation of most ports in Wales is currently the responsibility of the UK Government, scheduled to be devolved to the Welsh Ministers from April 2018. National Government policy on new port development is set out in the National Policy Statement for Ports, Department for Transport, January 2012 (NPS)³. This recognises the essential role of ports in the UK economy and in local and regional economies. Government policy therefore encourages sustainable port development to cater for long-term forecast growth in volumes of imports and exports.
- 3.2.5. The importance of Newport and the other South Wales ports is recognised in the Wales Spatial Plan and the Wales Transport Strategy 2008. The latter's objectives include increasing "*freight moved over rail and water, which in turn requires effective integration with the road network.*" A key action is to encourage short-term sea shipping, moving cargo and passengers by sea to European ports. Linked with this is the provision of better road and rail-freight connections to the main freight ports. The Welsh Government's objective is to increase the movement of cargo and passengers by sea to reduce vehicle movements on the road network.
- 3.2.6. Planning Policy Wales (PPW) Chapter 8: Transport, deals with ports and paragraph 8.5.3 encourages the carriage of freight by, amongst others, water rather than road. Paragraph 8.5.6 promotes the use of ports by protecting or providing access and retaining or providing appropriate wharf, dock, harbour and rail transfer facilities. Technical Advice Note (TAN) 18 equally seeks to promote the carriage of freight by water rather than road and encourages retention of wharf and harbour facilities and protection or provision of road and/or rail access.

³ Doc 7.1.18

- 3.2.7. The April 2017 ESS dealt with the changes to the design of the published Scheme. It stated that the bridge protection works then proposed in Newport Docks would not affect any ecologically sensitive sites or significantly change any of the conclusions in the March 2016 ES or the September and December 2016 ES Supplements.
- 3.2.8. A further supplement to the Environmental Statement dealing with the latest proposals was published in August 2017 (Document 2.8.6). The August 2017 ESS (No.5) concludes overall that, should the port relocation plan be implemented with reasonable and non-controversial mitigation measures during construction, together with best construction practice, the relocation works together with the works in South Dock would not have any greater significant adverse effect than that already reported in the March 2016 ES and later Supplements. The updated evidence of Mr Peter Ireland⁴ provides more information on the ESS.

The Impact on Vessel Movements

- 3.2.9. The new motorway bridge would restrict the air draft of ships entering the North Dock to a maximum of 25.86 metres if the dock level remains unchanged or 25.20 metres when the level is raised to account for climate change. In his original evidence, Mr Jonathan Vine⁵ analysed the impact of the headroom restriction due to the new bridge on the operation of the Port, concluding that the Scheme would impede only a small proportion of vessels visiting the North Dock.

⁴ WG 1.7.5

⁵ WG 1.22.1

- 3.2.10. In his updated evidence⁶, Mr Vine calculates the effect that reducing the width of the Junction Cut would have on the number of vessels visiting the North Dock and the consequent implications for the port's operations. In analysing the impact on the port operations, he has taken into account the Welsh Government's proposals to construct 303 metres of new quay on the north side of the South Dock and refurbish 250 metres on the south side. He has carried out this analysis for Junction Cut widths of 11 metres and 13.5 metres, together with no width reduction.
- 3.2.11. However, for the purposes of my assessment, since the draft Supplementary (No 4) Order specifies a 11 metre width and there is no agreement on any other dimension at the time of writing, I have taken a precautionary approach and assumed that the Junction Cut would be narrowed to 11 metres, although I am aware of the ongoing discussions regarding the width of 13.5 m.
- 3.2.12. Mr Vine calculates that if the Junction Cut were 11 metres wide, 97% of the ships that entered the North Dock in the period 2005-2015 would be prevented from doing so by the Scheme. The new and refurbished quay would be provided in two phases. Phase 1 would be 150 metres of new quay together with the 250 metres of refurbished quay on the south side of the South Dock. Phase 2 would be the remaining 153 metres of new quay on the north side of the South Dock. Mr Vine has assessed the capacity of the South Dock to accept the ships that would be impeded from entering the North Dock, taking into account the phased provision of additional quay space.

⁶ WG 1.22.5

- 3.2.13. He demonstrates, using historical data, that with an 11 metre wide Junction Cut, the currently available berth space in the South Dock would accommodate vessels unable to enter the North Dock 91% of the time. With Phase 1 of the new and refurbished quay completed, vessels unable to enter the North Dock could be accommodated in the South Dock 99% of the time, and with Phase 2 completed, vessels potentially displaced could berth in the South Dock 100% of the time. The Port would therefore be able to accommodate all vessels should the Scheme proceed.
- 3.2.14. Mr Vine also considers the impact of the Scheme on the two main tenants in the North Dock, W E Dowds Shipping Ltd and International Timber.
- 3.2.15. For Dowds, he acknowledges that for a Junction Cut width of 11m, most of the vessels used by Dowds would be affected; their operation would need to be modified so that their vessels berth in the South Dock. However, his analysis confirms that the South Dock can accommodate all relocated vessels with the new and refurbished quay proposed by the Welsh Government. Dowds Shipping Ltd currently operates in both the North and the South Docks and replacement sheds would be provided to the south of South Dock. Dowds could also take the remaining part of the shed currently occupied by Origin Fertilisers, who would also move to the south of South Dock (see further below).
- 3.2.16. International Timber Terminal would be provided with new temporary storage areas on vacant land located east of West Way Road and land adjacent to the North Dock between their existing operation and the west quay of North Dock. Appropriate edge restraints would be provided to create a safe working space. Those ships unable to access North Dock would be able to offload cargo on the north side of South Dock. The increased costs of transportation from the quayside to International Timber's facilities is a matter of compensation. As explained by Matthew Jones, this would mean that International

Timber would not suffer any losses as a result of the restriction at Junction Cut. On completion of the Scheme any land which is currently used by International Timber that is not required for permanent use within the Scheme would be offered back to ABP and International Timber, albeit with a restriction placed on its use for timber storage.

3.2.17. I therefore consider that the Welsh Government's proposals, including the creation of new and refurbished quay and facilities in the South Dock, would overcome the constraint on vessels accessing the North Dock due to the restricted headroom under the new bridge and the narrowing of the Junction Cut to 11 metres.

The Docks Way Junction and Link Road

3.2.18. There would be a loss of land within the Docks estate to construct the Docks Way Junction and Link Road. However, the new junction and link would improve access to Newport Docks from the new section of motorway, making the Dock area more attractive for investment in line with the advice in paragraph 8.5.6 of PPW that the use of ports should be promoted by providing access.

3.2.19. Mr Andrew Meaney⁷ considers the benefits in time saving due to improved access via the Docks Way junction to the new motorway network and states that in his view it is reasonable to expect property prices and rents to increase at the Port as a result of the Scheme. There would therefore be potential benefits from the Docks Way Junction, first, to businesses in terms of time saving and efficiency and, second, to ABP from increased rental income. The land required to construct the Link Road would have minimal impact on the operation of the Docks.

3.2.20. Mr Matthew Jones describes in his updated evidence the measures that would allow the tenants affected by the Link Road to remain on their existing sites.

⁷ WG 1.4.1

3.2.21. Mr Ben Sibert⁸ makes clear in his evidence that the Welsh Government's intention would be to agree rights of access to the land under the new section of motorway wherever possible to enable its continued use, provided this would not raise safety or security risks and there is access for maintenance. He describes in his updated evidence the work that has been done to assess the risk to the motorway bridge from fire. The land underneath the bridge would hence not be sterilised although there may need to be restrictions on its use for anything other than timber storage without Welsh Government agreement in the interests of safety. Mr Sibert describes in his original evidence a change to the support structure of the new section of motorway from soil embankment to concrete columns, enabling access to more land and facilitating the future construction of a western railway line as outlined in the M/Plan.

The Division of the Docks by the New Motorway

3.2.22. ABP states that the effect of the Scheme would be to divide the Port into separate areas. The Welsh Government's proposals also comprehensively address this issue. A swing bridge would be provided by way of accommodation works on the south side of the Junction Cut to enable mobile cranes, port equipment and HGVs to cross the extended Junction Cut in both directions. The dock edge on the east side of the Junction Cut would be graded to improve access for mobile cranes and HGV's up to the existing East Way. These proposals would not simply address the potential division of the Dock by the new motorway. The swing bridge across the Junction Cut would improve connectivity between the east and west sides of the Docks, assisting the circulation of cranes and vehicles and thus the movement of goods.

⁸ WG 1.5.1

3.2.23. The Welsh Government accepts that the new motorway bridge would restrict the movement of mobile cranes between the north and south sides of the new section of motorway and so has offered to fund two additional mobile harbour cranes for use around the North Dock. The Welsh Government's proposals would therefore overcome the division of the Docks by the new motorway and improve the efficiency of its operation.

ABP and Tenant Relocation Proposals (Port Relocation Plan)

3.2.24. In order to construct the new bridge and motorway through the Docks it would be necessary to reorganise the use of the land affected by construction works and relocate tenants. The Welsh Government has been working with ABP on plans to relocate tenants and uses within the Docks, both on a permanent and temporary basis. Details of these proposals are contained in the evidence update of Matthew Jones⁹. Mr Jones notes that whilst the principles of the Port Relocation Plan contained within the August 2017 Environmental Statement Supplement remain broadly similar, discussions have progressed with ABP and a number of revisions have occurred. The latest proposals are contained in the 'ABP and Tenant Relocation Proposals' contained within Appendix A of Matthew Jones' evidence update.

3.2.25. The proposals involve relocating the uses and occupiers mainly to three undeveloped land parcels around the South Dock on a like for like basis, providing new buildings (both permanent and temporary), hard standings, fencing and infrastructure on levelled and cleared sites.

⁹ WG 1.1.8

- 3.2.26. The relocation and reorganisation provides the opportunity to consolidate and rationalise the operations of tenants, potentially improving productivity in some cases and making better use of land. The Welsh Government's reorganisation proposals would provide new sites and buildings for all areas occupied by ABP and its tenants and create replacement common user storage areas.
- 3.2.27. Mr Jones explains that ABP holds an explosives licence issued by the Health and Safety Executive (HSE). This licence would be subject to revised limits if the Scheme were to proceed and would mean that much smaller consignments of explosives would be permitted at the port¹⁰. Reduced explosives handling capacity at Newport Docks would not significantly affect the Ministry of Defence's (MoD) ability to import and export munitions to and from the UK as other ports could be used. The Defence Infrastructure Organisation has confirmed that the Scheme falls outside of MOD safeguarding areas and that the MOD therefore has no safeguarding objection.
- 3.2.28. Mr Jones and Mr Andy Clifton¹¹ deal with ABP's hazardous substance consent for the co-storage of ammonium nitrate and urea by Origin Fertilisers. This consent would be revoked if the Scheme were to proceed without mitigation. However, the Welsh Government has developed proposals in consultation with ABP and Origin Fertilizers to relocate the company to a new site on the south side of the South Dock.
- 3.2.29. Mr Clifton explains that pre-application advice for a new hazardous substances consent has been sought from Newport City Council, who are awaiting a response from the Health and Safety Executive (HSE). He points out that HSE guidance has been taken into account in deciding Origin's new site and the relocation of other tenants. Using HSE's Land Use Planning Methodology Mr Clifton explains why the Executive would not 'Advise Against' the relocation proposals for

¹⁰ Doc 2.4.14, Appendix SS2.2

¹¹ WG 1.11.4

Origin and states that, on that basis, there is no reason why a new hazardous substances consent should not be granted, allowing Origin's business to continue operating from the Docks.

Planning Permission

- 3.2.30. Discussions with ABP have led to a preferred option for securing the planning permission required for the works proposed to address the impact on Newport Docks. It is intended to rely on powers afforded to ABP (which would need to be exercised by ABP) under Section 24 of the Alexandra (Newport) Docks Act 1865; Section 5 of the Alexandra (Newport and South Wales) Docks and Railways Act 1882; and Section 5 of the Alexandra (Newport and South Wales) Docks and Railways Act 1904, along with rights in Part 11 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) for the majority of the works.
- 3.2.31. Secretary of State consent may be required for the exercise of some of ABP's private Act powers. This is because either (a) the powers on which ABP would rely are subject to the provisions of the Harbours Docks and Piers Clauses Act 1847, section 12 of which require the consent of the Secretary of State for Transport in respect of some of the works; or (b) the private Act powers relied upon have their own requirements for Secretary of State consent. The Secretary of State's functions in this regard will however devolve to the Welsh Ministers pursuant to the Wales Act 2017.

- 3.2.32. In conjunction with consent under the various private Acts and/or the 1847 Act, ABP would rely chiefly on Part 11 of the GPDO, which requires them to seek the prior approval of Newport City Council for detailed plans and specifications. The GPDO states that prior approval cannot be refused other than on grounds that the development ought to be carried out elsewhere on the land, or that the design and external appearance of the building would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid that injury.
- 3.2.33. Newport City Council planning officers have confirmed that the proposals for the development of new and refurbished quay space, provision of a swing bridge over the Junction Cut, and relocation (and associated construction) of buildings at Newport Docks constitute development requiring an Environmental Impact Assessment (EIA). The withdrawal of permitted development rights where an EIA is required does not apply in respect of Part 11 of the GPDO. The requirement for an EIA under the Marine Works (Environmental Impact Assessment) Regulations 2007, where consents are sought under the various private Acts and/or the Docks and Piers Clauses Act 1847, would ensure that the required environmental information would also be available to accompany any application for prior approval.

3.2.34. Whilst Part 11 of the GPDO restricts the grounds on which Newport City Council Local Planning Authority could object to the proposed development, it is notable that the works would be in accordance with policy. Policy EM2 of the Newport Local Development Plan (LDP) protects the whole of Newport Docks, including the land to be used for the relocation of ABP and its tenants, for B1, B2 and B8 uses. The policy states that the Council will support such development where it can be demonstrated that it is complementary to and does not hinder the operational use of the Port. In view of the fact that they are intended explicitly to ensure that ABP, its tenants and Newport Docks can continue to operate efficiently, I conclude that the ABP and tenant relocation plans would, in principle, accord with LDP Policy EM2.

3.2.35. The three land parcels to be used for the relocation and reorganisation are in Zones B (areas known to have been flooded in the past) and C2 (areas of floodplain without significant flood defences) as defined in Technical Advice Note 15 (TAN15). Information has been gathered on flood risk within these land parcels and is included as an Appendix to the August 2017 Environmental Statement Supplement. This states that it would be necessary to raise the levels of the plots within the three land parcels to be used for relocation.

3.2.36. An assessment of flood risk will be prepared to accompany the application for prior approval. The flood risk assessment will describe and consider the risk and set out the proposed mitigation to address that risk in accordance with the relevant legislation and guidance. This will include checks to ensure that any mitigation measures do not increase flood risk to other receptors within the locality.

- 3.2.37. Nevertheless, bearing in mind that Policy EM2 of the Newport LDP protects the land involved for employment development; that ABP's Masterplan proposes this land for development; and taking into account the nature of the existing surrounding development, I would anticipate that the land required for the ABP and Tenant Relocation proposals can be developed in a manner that would satisfy the objectives of TAN15.
- 3.2.38. For the proposed works along the Docks Way Junction (and link), it is intended to rely on Part 13 of the GPDO. The Welsh Government propose to modify the Compulsory Purchase Order in that area after including a required retaining structure to avoid the need to completely demolish any buildings as this would not fall within the ambit of Part 13. The fact that the proposals may involve EIA development does not preclude the operation of Part 13.
- 3.2.39. Consequently, subject to detailed considerations of design, siting and measures to address any flood risk, there is no apparent planning reason why prior approval should not be confirmed for the Welsh Government's proposals to address the impact of the Scheme on Newport Docks. Whilst construction of the new bridge and motorway would cause short-term disruption, the Welsh Government's relocation proposals would ensure that ABP and its existing tenants could continue to operate and that the Docks would continue to function properly.
- 3.2.40. The applications for Secretary of State consent and the prior approval application under Part 11 of the GPDO would be for ABP to make and the Welsh Government is committed to working collaboratively with them to progress the necessary submissions.

3.2.41. The proposed works are intended to address the impact on Newport Docks and ensure they can continue to operate in an efficient and economical manner. Since the policy of both the UK and Welsh Governments encourages sustainable port development and the expansion of port facilities, the proposed works raise no apparent policy conflict. There is thus no reason to conclude that the necessary consents would not be granted.

Other Consents

3.2.42. The use of the port related powers described in the section above would, together with the application of scheme orders, avoid the need to obtain a Harbour Revision Order to address any impacts on public rights of navigation.

3.2.43. Various Marine Licences would be required under the provisions of Section 65 of the Marine and Coastal Access Act 2009 in respect of the works and these will be sought from NRW. Dr Peter Ireland and Mr Andrew Clifton give evidence in this regard.

3.2.44. An Environmental Statement would be required to be submitted in support of the Marine License application as set out in the Marine Works (Environmental Impact Assessment) Regulations 2007.

3.2.45. It is intended to carry out development in reliance on the permitted development rights afforded by Parts 11 and 13 of the GPDO 1995. In order to satisfy the requirements of article 3(1) of the GPDO 1995 and paragraphs 63 to 68 of the Conservation of Habitats and Species Regulations 2017, ABP will require the opinion of NRW under paragraph 76 of the 2017 Regulations.

Environmental Information

3.2.46. The works proposed by the Welsh Government to address the impact on Newport Docks are assessed in the August 2017 Environmental Statement Supplement (ESS5)¹². A further Environmental Statement Supplement was published in October 2017 (ESS6)¹³ dealing with, amongst other matters, minor changes to the bridge protection works and tenant relocation proposals, and further ecological surveys in Newport Docks to support the proposed relocation works. The Scheme Evidence Update by Dr Peter Ireland¹⁴ deals with both of these documents.

3.2.47. ESS5 concludes that, subject to the ABP and Tenant Relocation Proposals being implemented with reasonable and non-controversial mitigation measures during construction and following best construction practice, the relocation works and the works in South Dock would not have any greater significant adverse effect than that already reported in the March 2016 Environmental Statement (ES) for the Scheme. ESS6 similarly concludes that none of the additional data provided in the October 2017 ESS materially alters the assessment and conclusions of the March 2016 ES

3.2.48. Dr Ireland also deals with the August 2017 Addendum to the Statement to Inform an Appropriate Assessment (SIAA)¹⁵, which has been subject to consultation with NRW and addresses matters pertinent to the Newport Docks proposals and the potential impact on European Sites. The SIAA Addendum concludes

¹² Doc 2.8.6

¹³ Doc 2.9.1

¹⁴ WG 1.7.5

¹⁵ Doc 2.8.9

“...that there would be no adverse effect of the proposed works and development at the south of Newport Docks on the integrity of the relevant European sites, either alone or in-combination with other plans and projects. Nor would the proposals affect the overall assessment of the M4CaN Scheme that this would similarly have no adverse effect on the integrity of the relevant European Sites”.

3.2.49. Whilst the ABP and Tenant Relocation proposals have evolved and further assessments will be required when more detailed designs are complete I consider that, on the basis of the information contained in ESS5 and ESS6 and the August 2017 SIAA Addendum, there would be no barrier to the necessary approvals being given.

3.2.50. A section 106 agreement or unilateral undertaking is proposed to ensure that mitigation is delivered to avoid impact on the integrity of the nearby Severn Estuary SPA and River Usk SAC.

Welsh Government’s Proposals and ABP’s Master Plan

3.2.51. ABP and the tenants to be relocated would be provided with new buildings on new sites with modern infrastructure, designed to deal with climate change and with new access roads similarly able to function in times of flood. Some of the existing sites and buildings are not in good condition and the Welsh Government’s relocation proposals would provide much improved facilities and working conditions in many cases, benefiting current and future generations. Whilst such benefit must be balanced against the inevitable disruption, this would be short term. In my view ABP and its tenants would benefit considerably from the new sites, buildings and associated infrastructure being provided for them. Mr Jones describes the relocation proposals in detail and reaches a similar conclusion.

3.2.52. Furthermore, looking at the wider picture, the South Dock would be capable of handling a considerably larger volume of shipping as a result of the provision of 553 metres of new and refurbished quay, which would increase the length of common user berths in the South

Dock by 61.8%. Whilst this is necessary to address the restriction on ships entering the North Dock due to the Scheme, it would bring forward the proposal in the M/Plan (page 32, para 5.32) to provide further berths in South Dock in the period 2025-2035. It would address one of the problems discussed in the M/Plan posed by the increasing size of ships and the restriction imposed by the width of the Junction Cut.

- 3.2.53. The M/Plan identifies this as an issue to be addressed in the short-term, 2015-2020 (page 28, paras 5.18-20), by widening the Junction Cut. Whilst the new motorway bridge would make that impractical, the Welsh Government's proposals would address the issue of increasing ship size by expanding the berthing capabilities of the South Dock, which can accommodate the larger ships.
- 3.2.54. The M/Plan also proposes (page 26, para 5.9) that areas around the South Dock would be developed and enhanced in the 2015-20 period to accommodate cargo trends and port-related operations. It also states (para 5.7) that development will be undertaken in response to, and on occasion in anticipation of customer demand. The Welsh Government's relocation proposals, whilst aimed at accommodating the existing tenants to mitigate the impact of the Scheme, would bring about an overall enhancement of the infrastructure and environment around the South Dock, including improved connectivity as a result of the swing bridge.
- 3.2.55. This would make the area more attractive to potential new customers in advance of demand and, again, would realise one of the short-term objectives of the M/Plan, to attract inward investment and create new job opportunities (page 26, para 5.10). In addition, following relocation of existing tenants, No 9 Shed and the current ABP Stores together with the surrounding land would be vacant and available for new tenants.

- 3.2.56. The Welsh Government's proposal to refurbish 250 metres of quay on the south side of the South Dock would also contribute to and bring forward delivery of one of the medium-term (2020-25) proposals in the M/Plan (page 30, para 5.25), to repurpose the Coal Terminal when the anticipated cessation of coal handling occurs.
- 3.2.57. For the reasons set out above I therefore consider that the Welsh Government's latest mitigation and reorganisation proposals are necessary to address the Scheme's impact and would assist in the aims of the M/Plan and facilitate future investment and expansion. This would be in line with the policies of the UK and Welsh Governments that seek to encourage the movement of goods and freight by sea and the expansion of port facilities, as set out above and in the evidence of Mr Philip Rowell on behalf of ABP. Furthermore, the reorganisation proposals in the ABP and Tenant Relocation Proposals accord with Policy EM2 of the Newport LDP, which seeks to protect the existing 206 ha employment site at the Docks for B1, B2 and B8 uses.
- 3.2.58. Moreover, in developing these latest proposals the Welsh Government has again acted in accordance with the sustainable development principle of the Well-being of Future Generations (Wales) Act (WFG Act) by thinking long-term, working in a collaborative way and taking an integrated approach to the development of transport networks.
- 3.2.59. The Welsh Government's proposals to address the impact of the Scheme on Newport Docks would encourage the sustainable movement of freight by sea, and would contribute to several of its 2017 well-being objectives¹⁶, namely Objectives 1-3, 11 and 12. In turn, this would contribute to the 'Prosperous' and 'Globally Responsible' well-being goals of the WFG Act.

¹⁶ Doc 5.2.9

- 3.2.60. The M/Plan nonetheless would require substantial revision, since the ABP and Tenant Relocation Proposals would use land identified for future development, including a plot in the southeast of the port reserved for a ‘specialist occupier for value added processing’. However, at the time of writing ABP has not suggested that any occupier(s) have been identified for this plot or for other sites identified in the M/Plan as ‘strategic development plots’. Even statutory plans such as LDPs require regular review and revision to respond to changing circumstances.
- 3.2.61. ABP recognise that the M/Plan is aspirational. Whilst the Department for Transport recommends the preparation of master plans for all major ports such as Newport to aid future planning, these are not statutory documents but essentially business plans for future development. Ample undeveloped land would remain within the Docks for future development and new tenants.
- 3.2.62. ABP’s M/Plan argues that the new section of motorway would affect the operation of the Docks and place the growth strategy in significant jeopardy. However, whilst ABP still maintain an objection, that was written before the extensive discussions between the Welsh Government and ABP that have led to the current package of measures designed to address the impact on Newport Docks.
- 3.2.63. I have explained in this update to my evidence how the Welsh Government’s ABP and Tenant Relocation Proposals would put Newport Docks in a much better position to expand its future capacity in line with the objectives of the M/Plan. The M/Plan states that the restructuring and modernising of some existing facilities will be necessary to ensure the port continues to operate efficiently. The package of measures now proposed is necessary to address the impact of the Scheme on the operations of the Dock but at the same time provides an opportunity for the necessary restructuring and modernisation to take place.

Is there serious detriment?

- 3.2.64. I turn next to Section 16(2) of the Acquisition of Land Act 1981 and the question of 'serious detriment'. I am not aware of any guidance or court judgement to assist in applying this test. I therefore have interpreted it on the basis of its everyday meaning. In my view detriment that lasts for a short period only cannot be described as serious, since by definition any such detriment would disappear and the situation would return to that which pre-existed, or develop into a new situation at least as good as the former.
- 3.2.65. The question then is what may reasonably be regarded as short-term? In this particular case, I am helped by ABP's Masterplan, which describes the next 5 years as short term. Bearing in mind that the programmed construction period for the Scheme is over 4 years, the impact of the building work on Newport Docks would also be classed as short term. The updated evidence of Mr Barry Woodman¹⁷ explains how the Welsh Government would work with ABP and its tenants during construction and the measures it would take to ensure the Docks could continue to function. It acknowledges that there will be some short term construction impacts. Beyond that period the evidence of the Welsh Government's witnesses, as outlined above, demonstrates how the latest reorganisation and mitigation proposals would enable Newport Docks to continue to function properly and efficiently.
- 3.2.66. Mr Andrew Meaney analysed the economic impact on ABP and the Port of Newport in his original and supplementary proofs of evidence¹⁸. He estimated that there would be both a temporary and a permanent loss of ABP land. He calculated overall detriment to the Port by estimating the financial losses to ABP from two main sources - rental income and shipping income.

¹⁷ WG 1.6.5

¹⁸ WG 1.4.1 & 1.4.6

3.2.67. In his updated evidence¹⁹ Mr Meaney has revised his calculations of financial detriment using Mr Vine's analysis that shows how vessels displaced from North Dock could be accommodated in the South Dock. Because of the slight impediment possible until completion of Phase 2 of the proposed new quay space, Mr Meaney calculates a £0.02m detriment in maritime revenues with an 11 metres wide Junction Cut. There would be no loss of rental income to ABP in the light of the Welsh Government's proposals to provide new sites and buildings to enable all displaced tenants to remain within Newport Docks. However, there would be betterment of £4.1m due to the increased attractiveness of Newport Docks to future tenants resulting from the improved connectivity of the Docks to the motorway network using the Docks Way Junction and Link Road, as well as improved buildings and facilities in many cases. Mr Meaney concludes that the betterment would outweigh any residual financial impact.

3.2.68. I therefore consider that the detriment to ABP would be limited to disruption during Scheme construction and the associated relocation of Dock facilities and tenants, with minimal loss of rental income in the short term. However, beyond that the Welsh Government's mitigation and relocation proposals would negate the short term detriment and provide the necessary facilities to adequately replace those lost to construct the new section of motorway.

3.2.69. I conclude that ABP and its operations as statutory undertaker would not suffer serious detriment due to the Scheme for the M4 Corridor around Newport.

¹⁹ WG 1.4.6

Economic Benefit

3.2.70. Mr Stephen Bussell has updated his evidence²⁰ to account for the proposed works at Newport Docks and other factors including the extended Public Inquiry. The capital cost of the Scheme has increased by £189.5m from £1.131bn to £1.321bn. Mr Matthew Jones²¹ confirms that the date of opening of the Scheme would be put back to December 2023 because of the additional works in Newport Docks. Mr Bussell has therefore appraised the Scheme benefits over the period 2024-2083. Forecast traffic growth and therefore congestion on the existing M4 means that the benefits of the Scheme in the period 2024-2083 are higher compared with 2022-2081. Whilst the benefits of the Scheme would be realised later, this would be offset by traffic growth. Therefore, the net effect of postponing the Scheme opening year would be a very slight increase in user benefits.

3.2.71. In addition, he has calculated the benefits of the Scheme based on the UK Government's confirmation that the Severn Bridge Tolls will be removed by the end of 2018. On this basis, the initial and adjusted Benefit Cost Ratios (BCR) for the Scheme are 1.70 and 2.29, broadly unchanged from the initial BCR of 1.66 and adjusted BCR of 2.27 given in the March 2017 Revised Economic Appraisal Report Supplement, which included the Magor Eastbound Off-slip. The effect of the increased cost of the Scheme is offset by the increase in predicted benefits that would follow the abolition of the Severn Crossing tolls. This confirms that, taking account of the increased capital cost due to the works at Newport Docks, the Scheme continues to represent good value for money, with its benefits outweighing its costs by a ratio substantially in excess of 2 to 1 when wider economic benefits are included.

²⁰ WG 1.3.6

²¹ WG 1.1.8

3.2.72. Mr Bussell also reviews the impact of the Scheme on Newport Docks in the light of the ABP and Tenant Relocation Proposals and the analysis by Mr Meaney, concluding that any impact would not offset the economic benefits of the new section of motorway. The economic benefits of the Scheme continue to substantially outweigh its costs when the latest proposals for Newport Docks are included.

4. CONCLUSIONS

- 4.1 In paragraphs 196 and 247 of my original proof of evidence, I acknowledge the potential impact of the Scheme on ABP and its tenants. For the reasons set out above, I consider the latest Welsh Government mitigation and relocation proposals would significantly reduce the impact of the Scheme and ensure ABP would not suffer serious detriment. Consequently, the Scheme's adverse impacts are materially reduced in weight, reinforcing my conclusion that its cumulative benefits heavily outweigh its impacts, and that the balance of advantage clearly lies in favour of the Scheme.
- 4.2 Finally, to summarise on the requirements of planning, the Welsh Government's latest proposals would in my view address the impact of the Scheme and ensure that this would be limited to the short-term disruption during construction and implementation of the ABP and Tenant Relocation Proposals. There would be no serious detriment to ABP or the operation of the Docks with the proposals for new and refurbished quay space in the South Dock implemented.
- 4.3 I consider that the Welsh Government's mitigation proposals are necessary to overcome the impact of the new section of motorway on Newport Docks. When considered overall they are in line with ABP's Masterplan and would encourage future investment and expansion. This would accord with the policy objectives of both the UK and Welsh Governments, to encourage the movement of goods and freight by sea and the expansion of port facilities. The ABP and Tenant Relocation Proposals comply with Policy EM2 of the Newport LDP, which seeks to protect the existing 206 ha employment site at the Docks for B1, B2 and B8 uses.

4.4 Whilst the Welsh Government's proposals to address the impact on Newport Docks comprise necessary mitigation, they once more demonstrate how it continues to seek to meet its duties under the Well-being of Future Generations (Wales) Act 2015. In drawing up these proposals, the Welsh Government has shown long-term thinking and has taken an integrated approach by addressing both the need for the Scheme and the need to secure the long-term future of the Port. It has acted in a collaborative manner by seeking to meet both its objective of addressing the problems on the motorway around Newport by delivering the Scheme, and ABP's objective to ensure the efficient operation of Newport Docks. These proposals would contribute to the Welsh Government's 2017 well-being objectives and to the well-being goals of the WFG Act. The Welsh Government's actions demonstrate how it continues to work in accordance with the sustainable development principle to deliver projects necessary to the well-being of the people of Wales.