

**Hutchings, Keri**

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**From:** Thomas, Rob  
**Sent:** 15 April 2008 16:59  
**To:** 'Gareth Williams'; Hutchings, Keri  
**Cc:** Thomas, Rob; Richard Keogh; Ken - GW South Wales Thomas; John Penaluna; Catherine Evans; DPeake@ukonline.co.uk  
**Subject:** RE: WE30327 Barry Eaterfront - Development Principles

Mr Williams,

Thank you for your letter, the content of which is noted. I have this afternoon spoken to the Leader of the Council, Councillor Margaret Alexander and she has agreed that your letter, together with this acknowledgement is made available to Members of the Cabinet who will as you know consider the matter tomorrow (Wednesday). I will also undertake to 'table' the letter, together with this acknowledgement at Thursday's Planning Committee meeting, which is also due to consider the Draft Development Principles document.

Given the timescales involved it is not possible for me to comment in any great detail on your letter. I would however point out that you are well aware, as are all those involved in the consortium that this document is a 'draft' for consultation, and that consultation will follow the consideration of this matter by Cabinet, Planning Committee and the Economy and Environment Scrutiny Committee. The consortium and their agents will be invited to comment on the draft during this consultation exercise and I would fully expect you to make comments at that stage. You will no doubt appreciate that I cannot take comments made in advance of the formal consultation period as comments in response to that consultation.

You will also be aware that we have discussed the issue of Section 106 agreements previously, and that the rationale for producing a Development Principles document has been partly driven by the importance of making progress on issues relating to Section 106 issues as an integral part of the master planning exercise that you are undertaking. You will no doubt recall that we did meet to discuss Section 106 issues some time ago (21<sup>st</sup> January) but no agreement was reached. Furthermore your own Draft Development Brief devotes very little in the way of detail on Section 106 issues, hence the need for this Council to produce its own document for consultation, which document does include reference to Section 106 agreements and potential heads of terms. These matters will be subject to ongoing discussions with yourselves as a consortium, both in terms of consultation on the Draft Development principles document and through the master planning process that will ultimately lead to planning applications being submitted.

I do however feel that given that the consortium are not in a position to submit planning applications in the immediate future, references to planning appeals and the preparation of unilateral undertakings is both premature and is far from helpful and adds nothing to the discussions that we have been having and will continue to have on the taking forward of this important project.

Rob Thomas  
Head of Planning and Transportation

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**From:** Gareth Williams [mailto:gwilliams@nlplanning.com]  
**Sent:** 15 April 2008 14:59  
**To:** KHutchings@valeofglamorgan.gov.uk  
**Cc:** Thomas, Rob; Richard Keogh; Ken - GW South Wales Thomas; John Penaluna; Catherine Evans; DPeake@ukonline.co.uk  
**Subject:** WE30327 Barry Eaterfront - Development Principles

Keri

Further to our telephone conversation please find attached a letter on behalf of the development consortium for Barry Waterfront. We would be grateful if this could be distributed to Cabinet Members in advance of tomorrows meeting.

If you require any additional information please contact me.


Best Regards

**Gareth Williams**  
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## Hutchings, Keri

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**Subject:** WE30327 Barry Eaterfront - Development Principles  
**Attachments:** L30327-024s106.pdf

Keri

Further to our telephone conversation please find attached a letter on behalf of the development consortium for Barry Waterfront. We would be grateful if this could be distributed to Cabinet Members in advance of tomorrows meeting.

If you require any additional information please contact me.

Best Regards

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Date: 14<sup>th</sup> April 2008  
Our ref: WE30327  
Your ref:

Dear Councillor

### Development Principles Document – Barry Waterfront

We write on behalf of the developer consortium for Barry Waterfront concerning the draft Development Principles Document that we understand is being considered by Council's Cabinet on 16<sup>th</sup> April 2008 before being issued for consultation.

The consortium support the broad development principles proposed in the document as the basis for the production a joint development brief and subsequent masterplan. It is evident that there is already high degree of overlap between the development principles and the emerging proposals which we consider is a product of the close joint working on initial master-planning related issues between the consortium and Council.

However, we have significant concerns regarding the proposed Planning Obligation Requirements set out in Appendix 2. It is our view that these proposed 'requirements' do not accord with the guidance set out in Circular 13/97 'Planning Obligations' and Planning Policy Wales which state that planning obligations should only be sought where they are:

- Necessary;
- Relevant to planning;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development and;
- Reasonable in all other respects

The items set out in appendix 2 indicates that the Council has very significant aspirations for planning gain which extend beyond what could reasonably be justified in terms of planning guidance or policies within the Councils' adopted Unitary Development Plan and which do not accord with the policy requirements set out in Circular 13/97.

In particular appendix 2 contains very specific figures and formulae for calculating financial contributions which have no evidence based justification or adopted policy basis e.g. formula for calculating contributions towards community facilities and sustainable transport. The Council is also seeking significant contributions for improved facilities and public works that do not arise as a result of the development e.g. new leisure centre; public realm improvements in Barry Island &



the Town Centre. In terms of the existing s106 agreement the Council is not taking a consistent approach to the consideration of outstanding levels of under or over provision of planning gain contributions.

When acquiring the site the consortium made an assessment of potential planning gain contributions based upon the policies set out within the adopted UDP and national planning guidance. The consortium also took account of the existing s106 agreement related to parts of the site. We are confident that the approach that we have taken to s106 negotiations to date is based upon that set out in Circular 13/97 and we have also sought legal advice that has confirmed this view.

We are concerned that if the Council continues to pursue all of these wide ranging and extensive planning gain aspirations then the viability of the scheme will be brought into question and the ability for delivering a quality major regeneration scheme in the heart of Barry will be compromised.

It is clear from the draft Development Principles document that there is a common vision between the Council and developer consortium to create a quality waterside development. It is our preference to work closely with the Council in the design and delivery of the scheme, however, we are seriously concerned that the approach that the Council is taking on s106 requirements is neither in accordance with government guidance nor based on a realistic assessment of commercial considerations.

Unless a more considered and flexible approach to s106 negotiations is forthcoming then the likely outcome is that any planning application will have to be considered by means of appeal. In these circumstances the planning application would be supported by a unilateral planning obligation based upon the consortiums view of reasonable planning gain. It would then be for a Planning Inspector to take a view on whether the consortiums s106 offer is reasonable in the light of the Council's adopted UDP policies and Circular 13/97. This is not our preferred approach as we would rather work jointly with the Council to arrive at a reasonable and proportionate level of planning gain contribution.

We consider that the broad s106 headings contained within section 4 of the draft Development Principles document are generally reasonable but that negotiations are not well enough progressed to justify the scale of planning obligations set out in appendix 2. As a result we request that this element of the document is deleted pending additional evidence based research and further discussions on this matter take place between the Council and the developer consortium. This would allow an agreed position to be reached which accords with the provisions of Circular 13/97, PPW and the Council's UDP and which also maximises the potential to deliver the high quality development solution that the site requires in partnership with the Council and through consultation with the people of Barry.



Nathaniel Lichfield  
and Partners

Planning Design Economics

We would be grateful if you would please make copies of this correspondence available to members at tomorrow's Cabinet meeting.

Yours faithfully

A handwritten signature in black ink that reads 'Gareth Williams'.

**Gareth Williams**  
**Senior Associate Director**