

DATED

12 July 2024

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO PROPERTY AT**

FIELDS FARM WHITCHURCH (MAELOR FOREST NURSERIES LTD) SY13 3HZ

between

Wrexham County Borough Council

and

Maelor Forest Nurseries Holdings Limited

Linda Roberts

~~Interim~~ Chief Officer Governance and Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/041698

This Deed is dated

12 July

2024

Parties

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY (**Council**)
- (2) **MAELOR FOREST NURSERIES HOLDINGS LIMITED** (co regn no **10036038**) of Fields Farm, Bronington, Whitchurch, Shropshire SY13 3HZ (**Owner**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property registered at HM Land Registry with title number WA866166.
- (C) Maelor Forest Nurseries Limited has made the Planning Application and is proposing to carry out the Development.
- (D) The Council resolved at its meeting on 1 November 2021 that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

Base Rate: the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any Material Operation but disregarding for the purposes of this Deed and for no other purpose, the following operations:

- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and

- erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission.

Ecological Area any habitat areas required in accordance with the Ecological Management Plan.

Ecological Management Entity such body or bodies that is nominated or established by the Owner for the management and maintenance of the Ecological Area in accordance with Schedule 1

Ecological Management Plan: the ecological management plan submitted to and approved in writing by the Council in accordance with the conditions of the Planning Permission.

Material Operation a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission.

Plan A: the plan attached as ANNEX A to this Deed

Planning Application: the application for full planning permission registered by the Council on 19 January 2021 under reference number P/2021/0058.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application in the draft form attached as ANNEX B and any further planning permission granted by way of s.73 of the TCPA 1990.

Property: the Property known as Fields Farm, Whitchurch as edged red on the Plan and being part of the Property registered at HM Property Registry with title absolute under title number WA866166.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **this Deed** or to any other deed or document referred to in this deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2. Statutory provisions**
- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Conditionality

With the exception of clause 2, clause 3, clause 7, clause 9, clause 11, clause 12, clause 14, clause 15, clause 17, clause 18 and clause 19 (which take effect immediately), this Deed is conditional on the Commencement of Development

4. Covenants to the Council

The Owner covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- (b) give at least 20 Working Days written notice to the Council of the intended Commencement Date.

5. Release

No party to this Deed nor its successors in title nor any person deriving title from or under them shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all or part of its entire interest in the Property in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6. Determination of Deed

The obligations in this Deed shall cease to have effect if before the Commencement of Development:

- (a) the Planning Permission expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) the Planning Permission is quashed following a successful legal challenge.

7. Local Land charge

This Deed is a local land charge and shall be registered as such by the Council.

8. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9. Ownership

9.1 The Owner warrants that no person other than:

- (a) the Owner; and
- (b) Sir Wyndham Richard Guy Hanmer Baronet, Elizabeth Ann Lady Hanmer, Thomas Wyndham William Hanmer, Alexander MacLeod Wilson as registered proprietors of title number CYM725034 has any legal or equitable interest in the Property.

9.2 No planning obligations contained in this Deed shall be binding on land held by any statutory undertakers for their operational purposes.

9.3 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 30 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

10. Reasonableness

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

11. Disputes

Any dispute, controversy or claim arising out of or relating to this Deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be London.

12. No fetter of discretion

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

13. Waiver

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. Future Permissions

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

15. Agreements and Declarations

The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

16. Section 73 Variation

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application under section 73 of the Act in respect of conditions on the Planning Permission, save and in so far as this Deed has been amended by way of a Deed of Variation prior to the grant of such planning permission, references in this Deed and to the Planning Application and the Planning Permission shall be deemed to include any subsequent section 73 applications and planning permissions as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly

17. Notices

17.1 Any notice or other communication to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next working day delivery service.

17.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:

- (a) to the Council at Guildhall Wrexham LL11 1AY marked for the attention Chief Officer Planning and Environment; and
- (b) to the Owner at its registered address

or as otherwise specified by the relevant party by notice in writing to each other party.

- 17.3 Any notice or other communication given in accordance with clause 17.1 and clause 17.2 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

- 17.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

19. Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

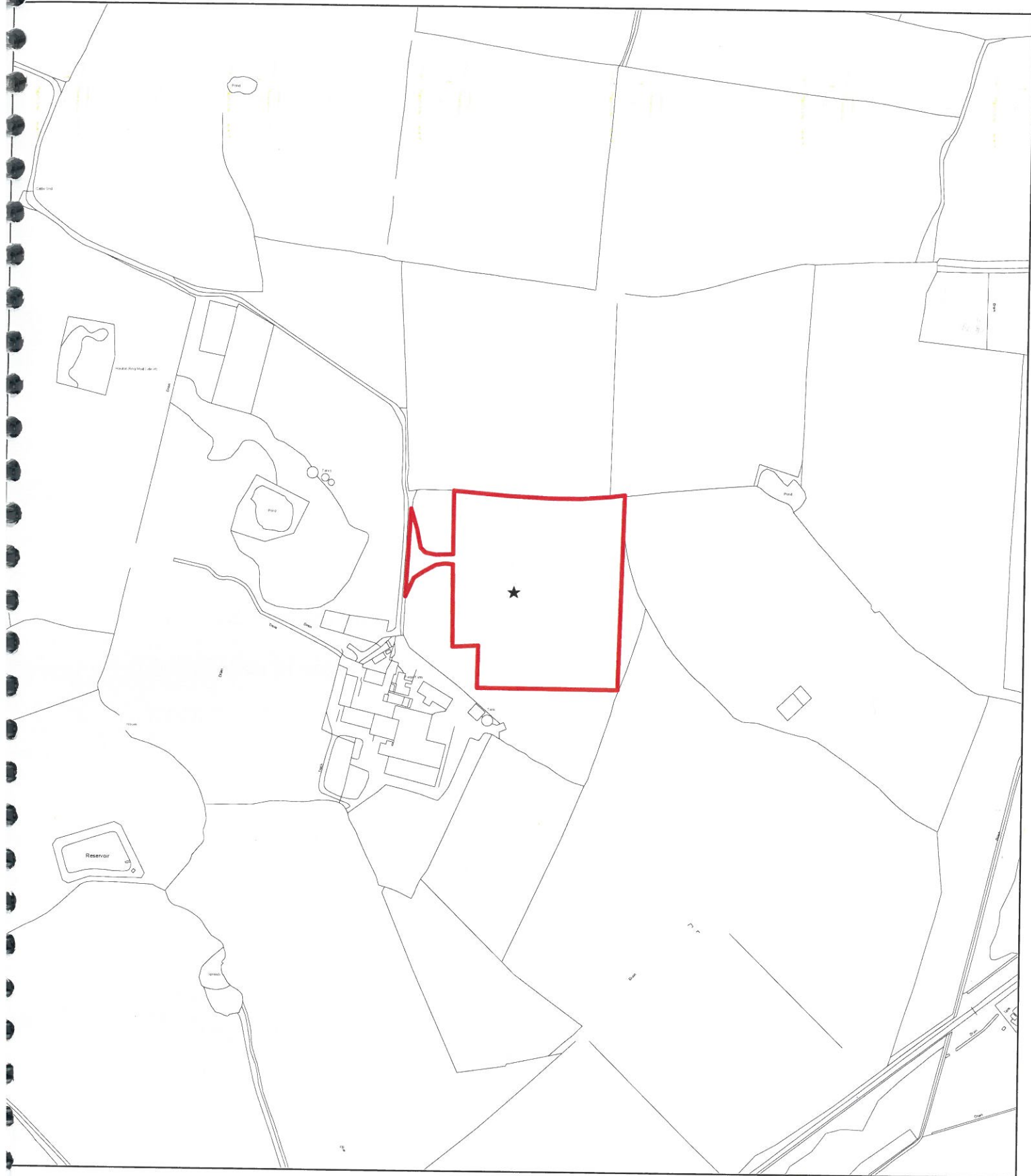
Schedule 1

Covenants to the Council

Owner's Covenants

1. The Owner covenants with the Council as follows:
 - 1.1 To comply with the approved Ecological Management Plan for the purpose of managing the habitat areas identified within it.
 - 1.2 Not to commence Development until the Ecological Management Plan has been submitted to and approved in writing by the Council.
 - 1.3 To procure that the Property is subsequently managed and maintained by the Ecological Management Entity in accordance with the approved Ecological Management Plan.
 - 1.4 To cooperate as necessary with all governmental quasi-governmental or private agencies charities or trusts with which relationships are required or recommended in the Ecological Management Plan.

Annex A - Plan A



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HEAD OF PLANNING AND REGULATORY
PLANNING DEPARTMENT
16 LORD STREET
WREXHAM
LL11 1LG

2 NOVEMBER 2021
SCALE 1:5000
SJ3433

**Town and Country Planning Act 1990
Section 106 Obligation**



P/2021/0058
LAND AT MAELOR FOREST NURSERIES
ELLESMERE ROAD
WHITCHURCH, SY13 3HZ

ANNEX B – draft Planning Permission

In pursuance of its powers under the Acts and Orders referred to below, the County Borough Council as Local Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application

Applicant	MAELOR FOREST NURSERIES LTD	Code Number	BRN P/2021/0058
Agent	RICHARD CORBETT ROGER PARRY AND PARTNERS LLP THE ESTATES OFFICE 20 SALOP ROAD OSWESTRY SY11 2NU	Date Received	07/01/2021
		Decision Date	

Town and Country Planning Act, 1990

Location of application

MAELOR FOREST NURSERIES LTD, ELLESMERE ROAD,
BRONINGTON, WHITCHURCH, SY13 3HZ

Description of application

CODI TWNELI POLYTHEN A GWEITHIAU CYSYLLTIEDIG / ERECTION OF
POLYTUNNELS AND ASSOCIATED WORKS

In reaching this decision the Council has had regard to the relevant policies in the Wrexham Unitary Development Plan which are as follows:-

EC13	Surface water run-off
EC3	Agricultural Buildings
EC4	Hedgerows, Trees and Woodland
EC6	Biodiversity Conservation
GDP1	Development objectives
PS2	Development and the environment
T8	Parking

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that permission be GRANTED
Subject to the following:-

Condition(s)

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. The development shall only be carried out in strict accordance with the details shown on the approved drawing(s) numbered

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MZ541 01C 16/6/2021 Block Plan
MZ541 01 16/6/2021 Location Plan
MZ541 03 16/2/2021 Elevations

and as contained within the application documentation.

3. No facing or roofing materials shall be used other than those detailed on the application form and within the approved application documentation.

4. Within three months of commencement of development, full details of a hard and soft landscaping scheme together with a timescale for implementation of works shall be submitted to and approved in writing by the Local Planning Authority.

5. The landscaping scheme submitted and approved in connection with condition no. 4 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

6. The landscaping scheme as carried out in connection with condition no. 5 shall be retained for a minimum of 5 years. Within this timescale, any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs of similar size and species to those originally required to be planted and within a timescale all to be submitted to and approved in writing by the Local Planning Authority.

7. No development shall commence until a GCN Conservation Plan has been submitted to and approved in writing by the Local Planning Authority. The Conservation Plan shall include, but not necessarily be limited to the following.

a. Build upon the principles outlined in the ecological report (Prestwood, W. (2021). Amphibian Conservation Plan; Maelor Forest Nurseries. Arbor Vitae Environment Ltd. Unpublished.)

b. The submission (to include proposed timescales and reporting requirements) of further details and associated plans concerning GCN avoidance and mitigation measures including, but not limited to: fence design; specifications and locations; considerations of access issues; monitoring and maintenance requirements; and supervised removal.

c. The submission of a long-term site management plan that includes: defined aims and objectives; habitat management prescriptions; contingency measures if fish or invasive non-native species (INNS) are detected; proposals that are capable of being implemented in the event of failure to undertake or to appropriately undertake identified or contingency actions; site liaison and wardening; licensing requirements for undertaking habitat

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management and surveillance; current and any proposed changes to tenure of the compensation area to be approved by the Local Planning Authority; persons or bodies responsible for undertaking management and surveillance together with required skills and competencies; reporting requirements; and proposed dates for updating or revising the management plan.

d. Details of timing, phasing and duration of construction activities and conservation measures.

e. Timetable for implementation demonstrating that works are aligned with the proposed development.

f. Ecological Compliance Audit, including key performance indicators to evidence compliant implementation of all ecological avoidance, mitigation and compensation works, either proposed or subject to the provisions of reserved matters conditions. The Audit shall identify Key Performance Indicators (KPIs) that are to be used for the purposes of assessing and evidencing compliant implementation of proposals.

g. Persons responsible for implementing the works.

h. Post-construction monitoring and record dissemination for a period of not less than 25 years. All ponds to be added to the Wales Great Crested Newt Monitoring Scheme, (see <https://www.cofnod.org.uk/LinkInfo?ID=7>) with individuals/bodies being identified as being responsible for monitoring and reporting works. Methodology shall include annual abundance counts and Habitat Suitability Index (HSI) assessments. Each water body shall be individually numbered on site.

The GCN Conservation Plan shall be carried out in accordance with the approved details.

8. No development with the potential to impact on invasive species, shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The risk assessment shall include measures to control, remove or for the long-term management of invasive species both during construction and operation. The Biosecurity Risk Assessment shall be carried out in accordance with the approved details

9. No part of the development shall be brought into use until the drainage scheme prepared by Hydro-Logic Services dated 15/9/2021 has been implemented. The scheme as approved shall be implemented in accordance with a timescale to be agreed as part of the submitted details and maintained thereafter.

10. No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations

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shall take place except in strict accordance with the Method Statement as is approved. The Method Statement shall include the following:

- a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
- b) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
- c) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
- d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
- e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
- f) Method for protecting retained trees during demolition works;
- g) Details of all proposed tree works, including felling and pruning.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
3. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
4. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
5. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
6. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
7. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in

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accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

8. To ensure that an approved Biosecurity Risk Assessment is implemented to secure measures to control the spread and effective management of any invasive non-native species at the site, in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

9. To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.

10. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s) in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.

Note(s) to applicant

You are advised that this grant of planning permission was made following the completion of an Agreement under Section 106 of the Town and Country Planning Act. Before undertaking any work under this permission you are advised to obtain full details of the Agreement and ensure that you are able to comply with its terms.

Warning: An European protected species (EPS) Licence is required for this development. This planning permission does not provide consent to undertake works that require an EPS licence. It is an offence to deliberately capture, kill or disturb EPS or to recklessly damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine. To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or at <https://naturalresources.wales/conservation-biodiversity-and-wildlife/europeanprotected-species/?lang=en>

Following the commencement of Schedule 3 of the Flood and Water Management Act, the works as proposed are required to obtain approval from the SuDS Approving Body (SAB) prior to commencement of those construction works. Further details of the SAB, the new national standards, the pre-application advice service and the application for approval process can be found on the Wrexham CBC's SAB webpage:

https://www.wrexham.gov.uk/english/planning_portal/sab/sab.htm or by contacting the SAB Team directly at SAB@wrexham.gov.uk

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Natural Resources Wales Advice for the Developer
Environmental Management

All works at the site must be carried out in accordance with PPG6: 'Working at construction and demolition sites' which are available on the following website:

<http://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>

The activity of importing waste into the site for use as, for example hardcore, must be registered with Natural Resources Wales as an exempt/permittable activity under the Environmental Permitting Regulations 2016. The developer should contact Natural Resources Wales to discuss the necessity for an exemption/permit for any material imported to and exported from the site.

If during construction/excavation works any contaminated material is revealed, then the movement of such material either on or off site should be done in consultation with Natural Resources Wales. Any waste excavation material or building waste generated in the course of the development must be disposed of satisfactorily and in accordance with Section 34 of the Environmental Protection Act 1990. Carriers transporting waste from the site must be registered waste carriers and movement of any Hazardous Waste from the site must be accompanied by Hazardous waste consignment notes. Waste produced during construction

Waste produced during the construction phase of your development must be dealt with appropriately and be in line with all relevant waste legislation including Duty of Care Regulations and Hazardous Waste Regulations. As part of your waste duty of care you must classify the waste produced:

- ☐ o before it is collected, disposed of or recovered
- ☐ o to identify the controls that apply to the movement of the waste
- ☐ o to complete waste documents and records
- ☐ o to identify suitably authorised waste management options
- ☐ o to prevent harm to people and the environment.

Any waste removed from site will be subject to waste management controls. The links below provide information on how to classify waste and register as a waste carrier or hazardous waste producer:

<https://naturalresources.wales/permits-and-permissions/waste/?lang=en>

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<https://naturalresources.wales/permits-and-permissions/waste/waste-permits/?lang=en>

Further guidance can be found on the GOV website here:

<https://www.gov.uk/managing-your-waste-an-overview/duty-of-care>

Agriculture

The facilities must comply with the Water Resources (Control of Pollution) (Silage and Slurry) (Wales) Regulations 2010. Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or groundwater.

Please refer to the link below for further information:

<http://naturalresources.wales/guidance-and-advice/business-sectors/farming/good-farming-practice/?lang=en>



Officer Appointed for this purpose
Chief Officer Planning & Regulatory

Refer to Statement of Applicant's Rights and General Information on our planning web site at:-

http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL in the presence of:-



Interim Chief Officer Governance and Customer

R



EXECUTED as a DEED by

MAELOR FOREST NURSERIES HOLDINGS LIMITED

Director



Director/Secretary



In the presence of: Andrew Stephen Henry

Witness Signature: 

Witness Name: Andrew Stephen Henry

Address : 3, Frodesley Court Barns .
Frodesley
Longnor
Shrewsbury
SY5 7PH

Occupation: Nursery Director