



**Cyfoeth
Naturiol
Cymru
Natural
Resources
Wales**

Ein cyf/Our ref: CAS-205348-B4W1
Eich cyf/Your ref: P/2022/0725

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06/01/2023

Dear Emma,

BWRIAD / PROPOSAL: DATBLYGU'R KOP AR GYFER 5,500 O SEDDI I WYLLWYR, YN CYNNWYS ARDAL LLETYGARWCH I HYD AT 500 O BOBL, GYDA CHAPASITI I 600 AR GYFER GOFOD ARDDANGOS NAD YW AR DDIWRNOD GEM, PARTH CYHOEDDUS NEWYDD A GWAITH CYSYLTIEDIG / KOP DEVELOPMENT FOR 5,500 SPECTATOR SEATS, INCLUSIVE OF A 500 CAPACITY HOSPITALITY AREA, WITH A 600 CAPACITY NON-MATCH DAY EXHIBITION SPACE, NEW PUBLIC REALM AND ASSOCIATED WORKS

LLEOLIAD / LOCATION: THE RACECOURSE, MOLD ROAD, WREXHAM, LL11 2AH

Thank you for re-consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above with further information, which we received on 16/12/2022. You are requesting our comments on an updated draft Habitats Regulations Appropriate Assessment (dated 15/12/2022) as well as the 'HRA derogation notice' (undated).

We understand that there is extant permission for 5000 standing capacity at the site. As per our planning [advice](#), any development that does not increase the volume and phosphorus concentration of wastewater can be screened out at the test of likely significant effect (TLSE) stage of the HRA (Habitats Regulations Assessment) process.

We note from the information submitted that you consider the development, as proposed, will result in increased visitor numbers. This has the potential to increase the volume or concentration of wastewater (and hence associated phosphorus levels) being discharged from the site, which may impact the River Dee and Bala Lake Special Area of Conservation (SAC). As such, we agree an Appropriate Assessment (AA) is required.

We were previously consulted on your draft Habitats Regulations Appropriate Assessment on 3/11/2022, and we provided our advice on 7/11/2022 (our reference CAS-202642-W3T1). As highlighted in our previous advice, a project cannot be authorised if it will have an adverse impact on site integrity unless the derogations set out under Regulations 64 and 68 are met. Seeking derogation through HRA is exceptional and not an insignificant undertaking. It requires a robust evidence base, and we refer you to the [Habitats Regulations Assessments guidance](#), which sets out the process and legal test requirements in more detail.

As advised in our previous comments (dated 7/11/2022), a key requirement of the AA stage is to provide a clear understanding of the potential impact of a proposal (alone or in-combination) on the SAC. The AA must contain complete, precise and definitive conclusions, to ensure that there is no reasonable scientific doubt remaining as to the effects of the proposed plan or project. It is our view that **the AA still needs further significant development, as insufficient evidence has been provided in relation to the impacts of the development on the SAC and the mitigation proposed, to inform the decision-making process.**

It has been calculated that 10.875kg of phosphorus (P) would be generated in wastewater and this would be discharged to the Five Fords Wastewater Treatment Works (WwTW). This calculation appears reasonable. However, we note the calculation is based on usage rates/frequency of the development and as such, you should ensure that you are satisfied with the Design Assumptions in section 4.1 in accepting these values.

We note no assessment has been undertaken in the AA to determine the net increase in phosphorus discharge to the SAC, what river reach may be affected and what effect the increases in discharge will have on designated features of the SAC. In practice, the wastewater would be discharged to Five Fords WwTW, as per the current situation, where P stripping is in place (albeit with a limit not yet certain with regards meeting water quality targets). As a result of this treatment process, the resultant effluent discharged to the river environment could see phosphorus concentrations reduced by about 90%. The AA should fully assess whether the phosphorus discharges attributed to the development can be mitigated and, with the implementation of those mitigation measures, whether there would be adverse effects on site integrity, alone or in-combination.

A key question in relation to the approach set out in the AA and accompanying derogation notice, is that there appears to be confusion between what constitutes mitigation and what constitutes compensatory measures (both terms are used interchangeably in the documents). For example, page 9 of the derogation notice states that “*Any harm to the River Dee SAC, will be minor, and possible to mitigate*”. Mitigation measures must be considered if feasible, rather than proceeding under Regulation 64 i.e. to derogation and provision of compensatory measures. No evidence has been provided to demonstrate that it is not feasible to provide mitigation measures for the proposed development. As such, it is unclear why the approach proposed here is any different to that proposed in relation to the Wrexham LDP housing allocations, as it appears to rely on the same measures (the Dee Catchment Phosphorus Reduction Strategy (DCPRS)), but in this instance refers to them as compensatory measures, whereas in relation to the LDP allocations they are considered to be mitigation. The aim of mitigation is to avoid or reduce the impact (mitigation measures are only applied and considered in the appropriate assessment). The aim of compensatory measures being to compensate for unavoidable impacts (and thereby ensuring that the overall coherence of European site network is protected); compensatory measures are only considered during the derogations process, once it has been established that adverse effects on site integrity cannot be ruled out.

A key principle of both mitigation and compensatory measures is that, generally speaking, they both need to be in place and functioning at the time of the proposals impact, there is no difference between the two in that respect.

The level of detail provided and the reliance on the DCPRS, be it as a compensatory measure or as mitigation, is insufficient. It is our understanding that the DCPRS was intended to be used to achieve the conservation objectives of the SAC and as mitigation against the Wrexham and Flintshire LDP housing allocations. There is currently no clear justification as to how the strategy can accommodate additional proposals, without compromising the ability to achieve the conservation objectives of the SAC. There is also no detail to explain: which measures within the strategy this Kop proposal would be linked to; when those measures would be delivered, thereby allowing the Kop proposal to be occupied and become operational; and how this would be controlled as part of any planning permission granted. There is a statement on page 4 of the HRA that states that 'A condition could restrict use of the stadium until a particular identified measure is operational'. However, compensation measures should be identified prior to allowing a project to proceed. Section 6 of the HRA Derogation Notice lists the information that should be provided with respect to an identified measure e.g. the location of compensation areas, methods and techniques for implementing the measures, associated costs, monitoring proposals, responsibility for implementing the measures etc. In our opinion the information provided in section 6 is insufficient, and we are therefore currently unable to advise whether the proposed compensatory measures will ensure that the overall coherence of European site network is protected.

As a wider point, we advise that there needs to be an understanding of how proposals that use the DCPRS to deliver mitigation are logged on an ongoing basis – presumably the DCPRS does not offer an infinite amount of phosphorus removal, and somewhere there needs to be a calculation of the amount of phosphorus removal that the DCPRS will deliver, together with a list of the development proposals that are being set against this. Without this ongoing tally, there is a risk that all new developments could simply point to the DCPRS to gain approval, and whose discharges then exceed the amount of phosphorus that the DCPRS is capable of removing.

In summary, our advice is that potential mitigation measures should be assessed within the AA before coming to a conclusion with respect to adverse effects on site integrity. If following further development of your AA, you cannot rule out adverse effect on site integrity, then you would need to consider whether a derogation is appropriate. We advise that the HRA Derogation Notice as drafted does not provide sufficient information to inform the derogation test, particularly with respect to the need to secure compensatory measures.

If you have any queries on the above, please do not hesitate to contact us.

Yn gywir / Yours faithfully

Bryn Jones

Arweinydd Tîm - Cynllunio Datblygu / Team Leader- Development Planning
Cyfoeth Naturiol Cymru / Natural Resources Wales