



**Cyfoeth
Naturiol
Cymru
Natural
Resources
Wales**

Ein cyf/Our ref: CAS-189056-Y5B9
Eich cyf/Your ref: P/2021/0676

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06/07/2022

Annwyl Syr/Madam / Dear Sir/Madam,

BWRIAD / PROPOSAL: SOLAR PARK AND BATTERY STORAGE FACILITY

LLEOLIAD / LOCATION: LAND TO THE NORTH OF THE FORMER MAELOR GAS WORKS, WREXHAM

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 10/03/2022.

We continue to have concerns with the application as submitted. However, we are satisfied that these concerns can be overcome by attaching conditions regarding European protected species and ground water protection to any planning permission granted. Furthermore, we advise that the documents identified below must be included in the approved plans and documents condition on the decision notice. Without the inclusion of these conditions and documents we would object to this planning application.

1. Construction and Environment Management Plan (CEMP) (within the Surface Water Management Plan - Appendix D).
2. Flood Consequences Assessment (FCA) (ref: 258/FCA/v2, May 2021, Corylus Ltd).

Protected Species

Great Crested Newts (GCN)

Great crested newts and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and they are classed as a material consideration for planning under the provisions of Technical Advice Note 5: Nature Conservation and Planning (TAN 5).

The application site has been subject to assessment in respect of the GCN and additional information submitted in respect of this:

Etive Ecology Ltd. (June 2022). Proposed Solar Park Marchwiel, Wrexham. Great Crested Newt Mitigation Strategy.

The ecological submission confirms the presence of this species within and in the environs of the application site and has included additional mitigation following a meeting held between the developer, the local planning authority and NRW on the 15/06/2022.

In our view, the overall proposal has the potential to cause disturbance to great crested newts and/or loss or damage to their resting places during construction and operational phases. We therefore advise that implementation is subject to regulation under the provisions of a derogation licence.

The Regulations allow the approval of a scheme that would be likely to result in disturbance or harm to GCN, but only if satisfy an appropriate Habitats Directive derogation purpose and two tests before a licence can be issued from Natural Resources Wales.

In the case of development, the applicable derogation purpose is:

- “Preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment.”

Furthermore, the licence can only be issued by NRW on condition that there is:

- “no satisfactory alternative”, and that
- “the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range

Paragraph 6.3.7 of TAN 5, states that your Authority should not grant planning permission without having satisfied itself that the proposed scheme either would not impact adversely on any GCN's on the site or that, in accordance with Paragraph 6.4.23 of Planning Policy Wales (11th Edition) the above three requirements for derogation must be satisfied when considering development proposal applications. The LPA may as part of its assessment process materially consider representations from NRW as the relevant licencing authority.

We consider the habitat onsite is likely to support medium meta population of GCN and as the solar farm covers a substantial area (approx. 9.3 hectares), these works will result in significant direct and indirect disturbance during construction and for some time thereafter while habitats re-establish. GCN are known to readily utilise improved grassland in the wider area. We welcome the measures outlined in terms of general site management, soil mounds, provision of hibernacula, pond creation, hedgerow creation and rough grassland corridor. The additional mitigation area proposed will cover approximately 1.6ha which will contain additional features suitable for CGN. We therefore advise that the scheme as proposed satisfactorily demonstrates no likely detriment to the maintenance of the favourable conservation of the local population of GCN.

We advise you consult with your internal ecological advisor regarding the suitability of the plan for local environmental receptors. As the mitigation area now adjoins the Clywedog river, there may be further opportunities for in-river / riparian corridor management which could provide biodiversity gain.

Condition 1: No development shall commence until a GCN Conservation Plan has been submitted to and approved in writing by the Local Planning Authority.

The GCN Conservation Plan should include but not necessarily be limited to:

- Submission of details and associated plans concerning GCN avoidance and mitigation measures including, but not limited to: fence design, specifications and proposed locations; consideration of access issues across fence lines (including PROW if applicable); fence monitoring and maintenance requirements; and supervised removal of barrier fences. Submission to include proposed timescales and reporting requirements;
- Submission of a long term site management plan (not less than 25 years) that includes defined aims and objectives together with current and favourable conservation status of the local population of GCN; 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 management and surveillance;
- Current and any proposed changes to tenure of the dedicated ecology area to the satisfaction of the LPA (we advise tenure to accord with the definition of “responsible” body under Section 7 of the Environment Act 2021’); 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;
- Detail of the skills and competencies required by those undertaking management and maintenance works, surveillance or activities. The detail shall also specify requirements for European Protected Species licenses for each of the specified activities;
- Provision for periodic review mechanism for the Conservation Management Plan;
- Contingency measures that are capable of being implemented in the event of failure to undertake or appropriately implement identified management or surveillance prescriptions;
- Submission of details concerning the installation and maintenance of an amphibian friendly surface water management system that does not include gully pots;
- Details of timing, phasing and duration of construction activities and conservation measures;

- Timetable for implementation demonstrating that works are aligned with the proposed development;
- Ecological Compliance Audit, including key performance indicators;
- Persons responsible for implementing the works;
- Post construction monitoring plan. Monitoring plan to include:
 - Methodology: The Wales Great Crested Newt Monitoring Scheme shall be used with surveys being carried out annually for the first 5 years thereafter on a biennial basis from year 6. However, monitoring shall be carried out on an annual basis if fish or invasive non-native species are detected;
 - Duration: timescale to accord with operational and decommissioning phases of the proposal
 - Surveys shall be abundance counts and habitat quality assessments using Habitat Suitability Index (HSI) scores;
 - Identification of individuals/bodies being responsible for monitoring and reporting results;
 - Each water body shall be individually numbered on site.
- Submission of a biosecurity risk assessment.

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

Reason: To ensure that an approved GCN Conservation Plan is implemented, which protects the species affected by the development.

We advise that any submitted conservation plan references consideration of any planning condition or obligation requirements, including suggested 'Heads of Terms ' required for the purposes of informing the detail of any future Section 106 agreement.

It is suggested any planning obligation (Section 106 Agreement/Unilateral Undertaking) includes consideration of the following suggested provisions in respect of ecology. It is advised that suggested provisions be incorporated within any preliminary "Heads of Terms" document

- (a) Requirement to enter into a Section 39 Agreement under the Wildlife and Countryside Act 1981 (as amended) or Section 16 Management Agreement under the Environment (Wales) Act 2016 before commencement of construction or other date defined by the LPA. The applicant to pay all reasonable public sector costs associated with the completion of the management agreement;
- (b) [Annual / biennial] liaison meetings;
- (c) Management plan review and approval by the LPA or another body approved by the LPA' ;
- (d) Tenure and any proposed changes to tenure shall be carried to the satisfaction of the LPA in consultation with NRW

This advice applies to the proposal in its present form. If the plans are changed in ways that may affect GCN on this site, you would need a revised ecology report that takes account of such changes. Please consult us again if any updated or revised ecology report concludes

that the proposal is more likely to have an adverse impact on the GCN population and/or alters the detail or implementation of mitigation or compensation measures.

Please also note that any changes to plans between planning consent and the licence application may affect the outcome of a licence application.

NRW would refer the Planning Authority to the letter from the Welsh Government to Chief Planning Officer's dated 01 March 2018 which advises Local Planning Authorities to attach an informative regarding licence requirements to all consents and notices where European Protected Species are likely to be present on site.

Bats

We concur with the conclusions and recommendations in regard to bats.

Otter

We concur with the conclusions and recommendations in regard to otters.

Flood Risk

We have reviewed the letter submitted by Corylus in response to our letter dated 23rd August 2021.

Our previous concern was in relation to the impacts of the proposal on flood risk elsewhere, specifically increases in flood risk north of Field 2, west of Field 1a, and upstream of the site near the Mainetti building.

The letter has clarified that the increases north of Field 2 and west of Field 1a are within the land ownership boundary of the applicant, as confirmed in Figure A1. These increases in flood risk therefore do not impact third party land.

In respect to the increases identified near the Mainetti building, the letter explains that the identified increases are due to model instabilities. This is considered to be a reasonable explanation. Further work to the model has been undertaken (which has not been submitted for review) which has improved the stability of the model. The outputs from the improved model indicate that the increase in flood depths in vicinity of the Mainetti building are now below 5 mm.

We advise that the letter demonstrates that the proposal is not expected to result in unacceptable increases in flood risk elsewhere. We therefore remove our concerns for this application, subject to your Authority securing the proposed mitigation measures recommended in the FCA by including it in the list of approved plans/ documents.

Flood Risk Activity Permit

Based on the proposed plan, all development is set back from the Afon Clywedog. As the Afon Clywedog is a Main River, we may undertake maintenance activities along its length under our permissive powers. We require at least an 8-metre easement to be provided from the top of bank to any structures (such as perimeter fencing). A Flood Risk Activity Permit

(FRAP) may be required under the Environmental Permitting Regulations (2016) for any works in, over, under or near a main river or within a flood plain.

Groundwater protection and land contamination

We note that that the site was subject to previous industrial uses including a World War II munitions factory. We, therefore, request the following conditions are secured to any planning permission granted to ensure remediation of the site is completed:

Condition 2: No development shall commence until the following components of a scheme to deal with the risks associated with contamination at the site, has been submitted to and approved in writing by the Local Planning Authority.

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Justification: To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development as controlled waters are of high environmental sensitivity; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination

Condition 3: Prior to the operation of the development a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority.

The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as

identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Justification: To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation, to prevent both future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 4: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be carried out as approved.

Justification: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks. A site investigation may not uncover all instances of contamination and this condition ensures that contamination encountered during the development phase is dealt with appropriately.

Condition 5: No infiltration of surface water drainage into the ground Site is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Justification: To prevent both new and existing development from contributing to or being put at unacceptable risk from or being adversely affected by unacceptable levels of water pollution.

Condition 6: No development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling/foundation designs shall be implemented in accordance with the approved details.

Justification: Piling/foundation details should be submitted to ensure there is no unacceptable risk to groundwater during construction and methods/design are agreed prior to the commencement of development or phase of development.

Protected Sites

- Special Area of Conservation (SAC)

From the information provided, we consider that the proposals may affect the River Dee and Bala Lake SAC. The application is located within close proximity of River Clywedog which is hydrologically linked to the River Dee and Bala Lake SAC.

We have identified potential impact pathways to features of this site:

1. Pollution

The above pathways may not result in an adverse effect if the following measures are adhered to/ implemented:

3. Developer adheres to the Construction and Environment Management Plan (CEMP) (Surface Water Management Plan Appendix D).

The report must be included in the 'approved list of plans / documents' condition within the decision notice should consent for the project be granted.

We note the application site is within the catchment of the River Dee and Bala Lake SAC. On the 21st January 2021, we published an evidence package outlining phosphate levels for all river SACs across Wales. As part of this package, we issued a [Planning Position Statement](#), in which we advised that any proposed development that might increase the amount of phosphate within a river SAC catchment could lead to damaging effects to the SAC. However, the application as submitted is unlikely to increase the amount or concentration of phosphate discharged directly or indirectly into the catchment.

No assessment of likely significant effect under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 has been undertaken by your authority or it has not been forwarded to NRW for consideration. Should you conclude that the proposed development is likely to have a significant effect on the European site, we look forward to being re-consulted. In the absence of this assessment, NRW cannot offer assurances that the proposals would not result in an adverse effect upon the SAC.

- Site of Special Scientific Interest (SSSI)

We consider the proposals have the potential to impact upon the Afon Dyfrdwy (River Dee) SSSI. Providing the impact pathways referenced above for the SAC are adequately addressed, we consider the features of the SSSI will also be adequately safeguarded

Other Matters

Our comments above only relate specifically to matters included on our checklist, *Development Planning Advisory Service: Consultation Topics* (September 2018), which is published on our [website](#). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our [website](#) for further details.

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

Yn gywir / Yours faithfully

Tomos Hughes

Uwch Cynghorydd - Cynllunio Datblygu / Senior Advisor - Development Planning
Cyfoeth Naturiol Cymru / Natural Resources Wales