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27/08/2020

Dear Sir/Madam,

**BWRIAD / PROPOSAL: GLASS HOUSE WITH PACKING FACILITY AND OFFICES,
ENERGY CENTRE, RECOVERY PLANT AND RESERVOIRS**

LLEOLIAD / LOCATION: SESSICK WAY, MARCHWIEL, WRECSAM

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 2/8/2020.

We have significant concerns with the proposed development as submitted. We recommend you should only grant planning permission if the following requirements are met and you attach the following conditions to the permission. Otherwise, we would object to this planning application.

Summary of Requirements:

Requirement 1: Protected Species (Great crested newt): The scheme must be revised to include measures to ensure that the proposed development would not be likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Requirement 2: Protected Species (Bats): Further information is required to assess the extent of adverse effects on the bats and any avoidance or mitigation measures required.

Requirement 3: Protected Species (Otters): Further information is required to assess the extent of adverse effects on the otters and any avoidance or mitigation measures required.

Requirement 4: Protected Sites: Further information (in-combination assessment) to be submitted to enable your authority to carry out a Habitat Regulation Assessment (HRA).

Summary of Conditions:

Condition 1: The submission and implementation of a biosecurity risk assessment.

Condition 2: Land affected by contamination

Condition 3: Contamination verification report

Condition 4: Long term monitoring plan

Condition 5: Unsuspected contamination

Condition 6: Piling

Our detailed advice is as follows:

Protected Species

The planning consultation includes the following ecological submissions:

- Interim Ecological Impact Assessment (Greenlight Environmental Consultancy Ltd, 13 July 2020)
- Great Crested Newt Survey Report (Greenlight Environmental Consultancy Ltd, 13 July 2020)

We note that the Interim Ecological Impact Assessment submitted in support of the application states that further protected species surveys and assessments are being undertaken for great crested newts and bats to inform an ecological impact assessment and mitigation strategy. We consider that this information should have been provided as part of the planning application. We can provide further advice once in receipt of the additional information.

In terms of protected species, as outlined below, we have significant concerns with the application as presented.

Great crested newts (GCN)

We consider that the Wrexham Industrial Estate and its environs support a nationally important population of great crested newts

The proposal has the potential to cause disturbance to great crested newts and/or loss or damage to their resting places. GCNs and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 and are classed as a material consideration for planning under the provisions of Technical Advice Note 5: Nature Conservation and Planning (TAN5).

The Regulations allow the approval of a scheme that would be likely to result in disturbance or harm to GCN, but only if it satisfies 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 TAN5 states that your Authority should not grant planning permission without having satisfied itself that the proposed scheme either would not impact adversely on any GCNs on the site or that in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

We consider that it is possible that the species utilizes the site for foraging, dispersal or sheltering purposes. In our view, we consider that construction and operational phases of the proposal have the potential to adversely affect GCN. We therefore have significant concerns with the information provided, as explained below:

1. No comprehensive GCN survey has been carried out. To date only eDNA and Habitat Suitability Index (HSI) has been undertaken. In view the scale of the development, we would have expected abundance surveys to have been carried out.
2. No modelling has been carried out to assess impacts, for example on connectivity.
3. The proposed compensatory measures are too small in area. We advise that the size needs to accord with the size of the development. Please note that this requirement is included as a provision within your authority's Wrexham Industrial Estate Supplementary Planning Guidance. Furthermore, we consider it to be inappropriate to locate the GCN compensation within a flood risk area.
4. There is a risk of the proposed reservoirs acting as a pathway for fish colonization to existing breeding ponds – this has not been considered in the submission. A number of these pond have already been subject to derogation.
5. Long term tenure issues of compensation areas have not been considered.
6. The detail of how long term management will be actioned has not been considered
7. The proposed post construction monitoring does not accord with NRW requirements. Owing to the importance of Wrexham Industrial Estate and its environs, we would expect 25 years, as a minimum, to be appropriate in terms of duration.
8. Overall, the proposed scheme is considered to constitute a significant adverse risk to the current unfavourable conservation status of the Wrexham Industrial Estate GCN population.

Based on the current application, and as explained below the applicant has failed to demonstrate that the proposed development would not be likely to be detrimental to the maintenance of the favourable conservation status of the GCN population at this site.

Requirement 1: The scheme must be revised to include measures to ensure that the proposed development would not be likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. This should include, but not be restricted to the submission of the following further information:

- The submission and implementation of long-term compensatory proposals including, appropriately sized compensation area (based on 'like for like') and appropriate tenure;
- Consideration of incidental capture/killing during construction and operational phases of the scheme. This to include amphibian friendly surface water management systems;
- External ecological compliance audit including defined key performance indicators;
- The submission and implementation of long-term management, surveillance and wardening proposals;
- The submission of proposals that evidence the long-term provision of resources for future management, wardening and surveillance;

We therefore have significant concerns with the development as currently proposed until it can be demonstrated that the proposed development satisfies derogation provisions under the Habitats Directive and the Conservation of Habitats and Species Regulations 2017 (as amended).

Bats

The ecological report (Greenlight Environmental Consultancy Ltd, 13 July 2020) has identified there is high potential for bats to be using trees and a building on site for roosting. The report also identifies high potential for bats to be using the site for foraging and/or commuting. The report identifies that further activity/transect surveys are being undertaken to inform the assessment with respect to bats, however this information is not currently available.

From the information submitted, we consider that the proposed development is likely to represent a higher risk for bats, as defined in our guidance document '*Natural Resources Wales Approach to Bats and Planning (2015)*'. Bats and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017.

Although a bat report has been submitted, we advise that there is insufficient information to assess potential effects on bats, and how any effects will be avoided or mitigated.

Requirement 2: Protected Species: Further information is required to assess the extent of adverse effects on the bats and any avoidance or mitigation measures required. This must demonstrate that the proposed development would not be likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

The further information should provide details of results of emergence/activity and transect surveys undertaken at the site. The provision of this information will help to establish whether

the proposal has any implications on any bat roosts and to demonstrate that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of any local populations of bat.

In the meantime, we are unable to give you any assurance that the proposal would not be likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Otter

The Interim Ecology Assessment identifies that otters may be using the Afon Clywedog. Otters and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017(as amended).

We also consider that otters using the Afon Clywedog are likely to form part of the local population of otters that are present within the River Dee. The otter is one of the features of the River Dee and Bala Lake SAC (see below). Previous studies carried out within the Dee catchment highlighted the use of ponds by otter for foraging purposes

We note that a walkover survey did not identify presence of otter holts/resting places. However, we do not consider the overall assessment in respect of otter to be satisfactory. We consider that there are potential risks of incidental injury or killing of otter during construction and operation phases of the scheme. We therefore advise that further information is provided in respect of otter that articulates measures to be carried out that prevent impacts during construction and operational phases of the scheme.

Requirement 3: Further information is required to assess the extent of adverse effects on the otters and any avoidance or mitigation measures required. This must demonstrate that the proposed development would not be likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Habitat Directive European Protected Species Derogation

The application site is located on land located adjacent to an extant great crested newt derogation site.

Please note our response specifically concerns the Habitats Directive Article 16 test “*demonstration of no detriment to the maintenance of the favourable conservation status of European protected species*”.

We advise that before any consent is given, the LPA must satisfy itself as to whether the scheme constitutes a valid Article 16 derogation purpose and whether there is no satisfactory alternative to the proposal.

We wish to confirm that we have not considered these tests as part of our response. We therefore direct the LPA to published EC Articles 12-16 guidance in respect of these tests (see:http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf).

Please consult us again should you wish to receive specific comment on these requirements.

Invasive Non-Native Species

We advise that the ecological report has not fully considered the biosecurity risks of the proposal. We consider biosecurity to be a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern invasive non-native species (INNS) and diseases. We therefore advise that any future consent includes the imposition of a condition requiring the submission and implementation of a Biosecurity Risk Assessment to the satisfaction of the LPA.

We consider that this assessment must include

- (i) appropriate measures to control any INNS on site; and
- (ii) measures or actions that aim to prevent INNS being introduced to the site for the duration of construction and operational phases of the scheme.

Condition 1: The submission and implementation of a biosecurity risk assessment. Provisions of this assessment must include consideration of and inform proposed landscaping schemes.

Justification: To ensure that an approved Biosecurity Risk Assessment is implemented to secure measures to control the spread and effective management, and avoid the introduction, of any invasive non-native species at the site

Protected Sites

Aerial emissions

We note that the proposal involves the installation of four gas-fired Combined Heat and Power (CHP) units at the site. As a medium combustion plant, the screening distance for assessing ecological receptors is 5km for European sites (Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites) and 2km for Sites of Special Scientific Interest (SSSI).

The report identifies and assesses the following protected sites within the screening distances:

- River Dee and Bala Lake Special Area of Conservation (SAC)
- Johnstown Newt Sites SAC
- Berwyn and South Clwyd Mountains SAC

We agree with the conclusion in respect of aerial emissions that the proposal **alone** will not have a significant effect on the features of any SSSI/SAC. However, we do not consider that the Air Quality Assessment has appropriately considered potential in-combination/cumulative impacts on the above named SACs. In light of the Wealden judgement, we advise that (even when the Process Contribution is less than 1%),

consideration of other relevant projects may be required to ascertain whether there are possible in-combination effects. We note that there are likely to be other relevant projects which should be considered in-combination, though your authority may be best placed to advise on the list of relevant projects that the applicant should consider.

In view of the above, we have concerns that a significant effect from the proposed development cannot be ruled out. The following requirement needs to be met before allowing the proposed development to proceed. We would object to the planning application if the requirement is not met.

Requirement 4 Protected Sites: Further information (in-combination assessment) is submitted to enable your authority to carry out a Habitat Regulation Assessment (HRA) under regulation 63 of the Conservation of Habitats and Species Regulations 2017 prior to the determination of the planning application

Otter as a feature of the River Dee and Bala Lake SAC / Afon Dyfrdwy (River Dee) SSSI

Furthermore, as explained above (Protected Species), the features of the River Dee and Bala Lake SAC and the Afon Dyfrdwy (River Dee) SSSI include mobile species such as otter. We therefore advise that information (as outlined in Requirement 3) is submitted that evidences consideration of otter as a feature of the SAC/SSSI

Any proposed avoidance or mitigation measures in respect of otter as a European protected species are likely to be material to assessment carried out under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

To conclude, should you also conclude that the proposed development is likely to have a significant effect on an European site, we look forward to being consulted on your appropriate assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Land Contamination

We note that the land subject to the application was previously used in connection with the sewage farm. The site is also within close proximity to River Clywedog and has an underlying Secondary A aquifer.

The planning application does not include information with respect to possible land contamination at the site. We advise that the conditions listed below must be secured in any planning consent to address the risk of land contamination. We would object to the planning application if these conditions are not secured.

Condition 2 (Land affected by contamination)

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 (Contamination verification report)

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 (Long term monitoring plan)

Prior to the operation of the development, a long term monitoring plan for land contamination shall be submitted and approved in writing by the Local Planning Authority. The long term monitoring plan should include:

- Details of the methods and triggers for action to be undertaken
- Timescales for the long term monitoring and curtailment mechanisms e.g. a scheme of monitoring for 3 years unless the monitoring reports indicate that subsequent monitoring is or is not required (for x years)
- Timescales for submission of monitoring reports to the LPA e.g. annually
- Details of any necessary contingency and remedial actions and timescales for actions
- Details confirming that the contingency and remedial actions have been carried out.

The monitoring plan shall be carried out in accordance with the approved details, within the agreed timescales.

Justification: A land contamination long term monitoring plan should be submitted prior to occupation or operation, to ensure necessary monitoring measures are approved to manage any potential adverse impacts as a result of development on water quality.

Condition 5 (Unsuspected contamination)

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.

Condition 6 (Piling)

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.

The applicant will also need to refer to and adhere to the following guidance:

- Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
- Refer to the Environment Agency's '[Guiding Principles for Land Contamination](#)' for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
- Refer to the [Environment Agency's \(2017\) 'Approach to Groundwater Protection'](#)

Flood Risk

The site lies partially within Zone C2 as defined by the Development Advice Map (DAM) referred to under Technical Advice Note (TAN) 15 Development and Flood Risk (July 2004). Our Flood Map confirms the site to be located partially within the 1% (1 in 100) and 0.1% (1 in 1,000) annual exceedance probability (AEP) event flood outlines.

The development proposal is for industrial/commercial land use, including a commercial glasshouse with packing facility, office space, energy centre and carbon dioxide recovery plant. A Flood Consequences Assessment (FCA) has been submitted in support of the application (ref: 23380, July 2020, The Civil Engineering Practice).

As outlined above, the site lies partially within Zone C2, with the flood extent limited to the northern areas of the site. The FCA outlines that the operational area of the site lies outside the flood zone; this is supported by the proposed development plan, which shows all new development to be located outside the 0.1% AEP event flood outline. The development platform is therefore raised above the expected flood extent.

On the basis that all new development will be located outside the 0.1% AEP event flood outline, we raise no objection to this development proposal.

The existing site access is located in Zone C2. The FCA does not provide any indication as to what the potential flood depths/velocities could be for the site access. We therefore recommend that the North Wales Councils Regional Emergency Planning Service (NWC-REPS) is consulted in order to provide comments relating to access and egress matters. The FCA does outline that there is a flood free secondary access off Sessick Way.

Flood Risk Activity Permit

The Afon Clywedog is designated as 'Main River' adjacent to the site. A bespoke Flood Risk Activity Permit (Environmental Permitting Regulations England & Wales, 2016) may be required for any works in, over, under or near a main river or within a flood plain. Further advice and guidance is available on our website at: <http://www.naturalresources.wales/permits-and-permissions/flood-risk-activities/>

Surface Water Drainage

We note that a surface water drainage strategy and plan is included within the FCA. We would advise that Wrexham County Borough Council, in its duty as the Suds Approving Body

(SAB) and Lead Local Flood Authority (LLFA), is consulted in order to advise on the suitability of the drainage design, including techniques available to calculate surface water rates of discharge and infiltration rates, and to ensure that off-site risks are not increased due to this development proposal. We do not provide advice in this regard.

Protected Landscape

Our advice relates to the potential impacts on the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB).

The proposal lies approximately 8km from the AONB at its closest point at Bronwyflla, to the west. Footpaths on higher ground within the AONB, on the slopes of Ruabon Mountain are approximately 9-10km from the site.

Given the distances from the site, the proposal is unlikely to have an adverse effect on the AONB. Although a large scale proposal, the undulating landform, together with intervening trees and woodlands and the sewage works to the west mean that, although the development may be visible from the AONB, views are likely to be intermittent and partially screened. In addition, the proposal would be seen in the context of the adjacent sewage works and nearby industrial estate. It would increase views of industrial development to a very minor extent. Any potential glint and glare from the glasshouses is unlikely to have a substantial impact at these distances.

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.

Advice for the Developer

Pollution Prevention

The proposed development lies within the Dee Water Protection Zone (DWPZ) and it may require a DWPZ consent in order to operate in this area if the operator is planning to hold on site controlled substances above certain thresholds. Please visit our website for further information and contact the local environment officer if you have any queries. <https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-quality/dee-water-protection-zone/?lang=en>

Should the developer envisage use of pest control products then it should note that there are legal waste requirements in connection to the disposal of pesticide washings, which

might need the registration of a waste exemption or the application for a waste permit. Please contact the local NRW team for further advice.

During the construction phase the developer should take any precaution to prevent contamination of any surface water drain and the River Clywedog. Oils and chemicals should be stored in bunded areas and spill kits should be readily available in case of accidental spillages. For further guidance please visit "Working at construction and Demolition Sites, Pollution Prevention Guidance 6" <https://www.netregs.org.uk/media/1672/ppg-6.pdf>

If waste material is to be used for construction purposes, the activity must be registered with Natural Resources Wales. For further information please visit the website <https://www.gov.uk/government/collections/waste-exemptions-using-waste> and contact the local Environment team.

Any movement of waste material must be accompanied by Duty of care waste transfer notes in order to comply with the Waste duty of Care regulations.

The car park serving commuting vehicles and HGVs will require an adequately sized oil interceptor. Use of detergents for vehicle washings in this area should be avoided or confined within a dedicated area served by a sealed sump.

Permitting

We note that the proposal involves the installation of four gas-fired Combined Heat and Power (CHP) units at the site and would be considered to be a Medium Combustion Plant. We recommend that you liaise with NRW's Permitting Service with regard to any Environmental Permit that may be required.

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

Yn gywir / Yours faithfully

Bryn Griffiths

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