

## Planning, Taxi Licensing and Rights of Way Committee Report

**Application Number:** P/2018/0234  
**Grid Ref:** E: 292798  
N: 264630  
**Community Council:** Llanwrthwl Community  
**Valid Date:** 04.06.2018

**Applicant:** Mr Ewan Campbell-Lendrum

**Location:** The River Claerwen, Elan Valley, Rhayader, Powys.

**Proposal:** Full: Construction of a Hydro Electric Scheme, to include the erection of a Powerhouse, Transformer and Intake, and all associated works

**Application Type:** Full application

### The reason for Committee determination

The application is accompanied by an Environmental Impact Assessment (EIA). As such, the application is required to be determined by Members of the Planning, Taxi Licensing and Rights of Way Committee.

### Consultee Responses

#### Consultee

##### Llanwrthwl Community Council

The above application was discussed at the Community Council meeting held on the 9<sup>th</sup> July 2018. The Council support the application with the following recommendations;

- Local access will be preserved during construction;
- Farms, homesteads etc within the surrounding catchment area will be given concessionary access to the National Grid;
- Financial benefit be accrued to the local community.

##### Rhayader Town Council

The following planning applications were considered at the June meeting of Rhayader Town Council:

**P/2018/0234** for Full: Construction of a Hydro Electric Scheme, to include the erection of a Powerhouse, Transformer and Intake, and all associated works at The River Claerwen, Elan Valley, Rhayader, Powys.

Councillors were in general agreement about the local benefits which would accrue due to this application and recommended that it be permitted with the following provisos:

- Local access will be preserved during construction
- All farms, homesteads etc in the surrounding area and valleys not already connected to a mains electricity supply will have access to the new supply
- Financial benefit will accrue to the local community as a planning obligation under section 106.

### Highway Authority

*Correspondence received 19<sup>th</sup> June 2018 -*

The proposed development, when completed, is likely to generate very few vehicular trips. However, in order to complete the construction of this hydro scheme it is felt that a significant number of HGV's and contractor's vehicles will be required.

The County Council as Highway Authority for the Class III C1206 and Unclassified U0001 is unable to support this application.

Whilst it has been noted that an Environmental Statement (ES) and additional documentation has been submitted to support this application there is virtually no details with regard to Transport and Traffic. In addition, the application form indicates that a new or altered access is proposed, but no details have been submitted to confirm that a safe means of access is proposed.

Furthermore, we have noted that there appears to be a discrepancy in what the applicant suggests is the anticipated time period for the construction activities. On page 11 of the ES it is stated that it will be *between six and nine months*" whereas on page 20 it states that *"the construction works will extend to between nine and twelve months."*

On page 17, in section 5.1.3 Temporary Construction Compounds, reference is made to the two compounds that will be needed for the construction phase. Unfortunately, other than a note on Layout Plan 1 and 3 no further details have been submitted. On Layout Plan 3 a note states that the tight hairpin turn on the U0001 by Llanerch will "be improved to permit access" but no details are available. The Highway Authority will not permit any alterations unless it is satisfied that the proposals are compliant with current highway design standards. A further note indicates that the current bridge over the River Clarwen, subject of a 26 tonne weight limit, will "be strengthened to permit construction access" Again, there are no details of what is proposed.

An explanation is also required with regard to the reference to traffic signals at the junction of the U0001 and C1206 and at the site access by the bridge near to Rhiwnant?

In section 5.1.5 Offsite Access, they consider that the volume of traffic along the highways will still be “a significant daily volume and at times slow moving traffic will be moving.” They then state that they will mitigate any disruption by having the “equipment and material will be moved at specific times.” Once again, no details.

Section 6, page 22, identifies what they state are the main environmental issues that were included in the Elan Scoping Sep 17, which includes Traffic and Transport. We must request that this section is submitted for consideration.

Much of the route, from the B4518, to the site is restrictive in width and will not allow simultaneous two-way traffic movements. In particular, along the C1206 from the Caban Coch dam to the left turn over the next dam, the highway is bordered by fencing and stone walls with no verge available. Since this route will form the main route for all construction materials, the applicant is requested to confirm how traffic will be managed? If a coach and HGV were to meet, there is insufficient width to pass and areas that passing could be permitted are hundreds of metres away. Reversing movements over such long distances would not be supported.

The unclassified highway from Llanerch to Rhiwnant is a single track highway bordered by stones walls and hedges and has no passing bays, but this forms the main access route to the construction zone. No proposals have been submitted to identify suitable passing places so we must advise that we will not support the use of this highway. In addition, the hard core track that will form the main route for the pipeline corridor remains a public highway, and as such, we will need to be satisfied that the development proposals will not jeopardise the safety of users during the construction phase. At this moment in time, the lack of details submitted with this application do not confirm that safety for the public will be maintained.

Finally, the applicant is requested to submit full details of the number and types of vehicles that will be expected to travel to site during the construction phase together with the expected number of trips in an average day.

As a result of the lack details, from a highway perspective, we must recommend that the application be refused.

### Wales & West Utilities

According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus.

Please note that the plans are only valid for 28 days from the date of issue and updated plans must be requested before any work commences on site if this period has expired.

### Environmental Health

Environmental Protection has no adverse comments to make on this application.

### Countryside Services

*Correspondence dated 22<sup>nd</sup> June 2018*

Countryside Services objects to the development due to the adverse effect this application has on the Byway Open to All Traffic (BOAT) across the proposed site along with the lack of information relating to the usage of the BOAT by the developer.

Countryside Services requires details from the applicant or their agent regarding their intended usage of the BOAT, proposed length of any closures required and a breakdown of proposed works they are proposing to undertake to enable safe usage of the BOAT for themselves and users. A maintenance agreement agreeing responsibility for maintenance by the applicant would also need to be in place protecting the BOAT from future wear as a direct result from this proposal. Countryside Services would require this to be a condition of planning permission.

Until such a time as these conditions are in place and in the absence of any reply to the below, Countryside Services object on the grounds that there is insufficient information in order for us to make an informed decision, protecting the Public Right of Way and members of the public whom wish to use it.

*Correspondence dated 15<sup>th</sup> November 2018*

We request that the applicant, or their agent contact us to discuss the proposals. Myself or Emma Guy will be able to discuss aspects of the design, materials to be used, closures, the proposed diversion and timescales.

If the applicant or their agent would like to contact either myself or Emma Guy to arrange a discussion regarding the above we would be able to move forward with this project and the permissions they require from us as the Highway Authority.

### Clwyd Powys Archaeological Trust

Thank you for the consultation on this application.

We have been involved with this scheme extensively at the pre-application stage and we have seen and commented on both of the archaeological assessments submitted for the hydro scheme itself and the proposed cable connection.

Overall the archaeological impact is low and where identified sites may have been directly impacted they have been successfully avoided by design . On the hydro scheme site there is some potential for previously unrecorded archaeology to be revealed within the compound areas and during construction of the pipeline between the intake and powerhouse and we have recommended that a watching brief is maintained here for the duration of new earthmoving operations. This recommendation is also made within the archaeological contractors report as suitable mitigation.

The proposed cable route will have either no impact, or a very minor impact, to the sites identified along its route and due to the narrow cut proposed for the cable trench the potential for seeing significant new archaeology is considered to be low or negligible.

In accordance with the guidance in Tan 24 (May 2017) we would therefore recommend that the following condition is attached to any consent:

Suggested planning condition to facilitate an archaeological watching brief:

*The developer shall ensure that a suitably qualified archaeological contractor is present during the undertaking of any ground works in the development area so that an archaeological watching brief can be conducted. The archaeological watching brief must meet the standards laid down by the Chartered Institute for Archaeologists Standard and Guidance for archaeological watching briefs. The Local Planning Authority will be informed in writing, at least two weeks prior to the commencement of the development, of the name of the said archaeological contractor. A copy of the resulting report should be submitted to the Local Planning Authority and the Development Control Archaeologist, Clwyd-Powys Archaeological Trust (41 Broad Street, Welshpool, Powys, SY21 7RR Email: [markwalters@cpat.org.uk](mailto:markwalters@cpat.org.uk) Tel: 01938 553670). After approval by the Local Planning Authority, a copy of the report and resulting archive should also be sent to the Historic Environment Record Officer, Clwyd-Powys Archaeological Trust for inclusion in the regional Historic Environment Record.*

Reason: To secure preservation by record of any archaeological remains which may be revealed during ground excavations for the consented development.

I have attached a guide to sources of archaeological contractors who may wish to tender for the work and a brief is also attached. Please forward these to the applicant so that they are aware of the requirements.

Cadw

Thank you for your letter inviting our comments on the information submitted for the above planning application.

Advice

Having carefully considered the information provided with this planning application, we have no objections to the impact of the proposed development on the scheduled monuments listed in our assessment of the application below.

### Our role

Our statutory role in the planning process is to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled monuments, registered historic parks and gardens, registered historic landscapes where an Environmental Impact Assessment is required and development likely to have an impact on the outstanding universal value of a World Heritage Site. We do not provide an assessment of the likely impact of the development on listed buildings or conservation areas, as these are matters for the local authority.

It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission.

### National Policy

Applications for planning permission are considered in light of the Welsh Government's land use planning policy and guidance contained in Planning Policy Wales (PPW), Technical Advice Notes and related guidance.

PPW ([Chapter 6 – The Historic Environment](#)) explains that the conservation of archaeological remains is a material consideration in determining a planning application, whether those remains are a scheduled monument or not. Where nationally important archaeological remains, whether scheduled or not, and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in exceptional circumstances that planning permission will be granted if development would result in an adverse impact on a scheduled monument (or an archaeological site shown to be of national importance) or has a significantly damaging effect upon its setting. [Technical Advice Note 24: The Historic Environment](#) elaborates by explaining that there is a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of remains.

PPW also explains that local authorities should protect parks and gardens and their settings included in the first part of the Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales, and that the effect of a proposed development on a registered park or garden or its setting should be a material consideration in the determination of a planning application.

### Assessment

Located within a 1km buffer of the application route

Scheduled Monuments:

BR208 Ring Cairn on Esgair Ceiliog

BR209 Prehistoric Enclosure & Settlement Site on Craig y Llysiau

BR287 Cerrig Llwydion Deserted Rural Settlement.

BR208 & BR209 are not inter-visible with the proposal.

The Archaeological Desk Based assessment concludes that although construction works will be visible from the site no scheduled monument will be directly affected by the proposal and that whilst BR287 Cerrig Llwydion deserted rural settlement will be visible from the site there will be no impact upon it. Although no specific assessment of setting was undertaken this view is concurred with, apart from a short period during construction work, only the intake weir will be visible c 375m to the north of the scheduled monument; a modern intrusion of very limited scale. We consider that any damage caused to the setting of the scheduled monument will be very slight and not significant.

*Correspondence received 13<sup>th</sup> November 2018 –*

Thank you for your letter of 18 October 2018 inviting our comments on the consultation submitted for the above mentioned proposal. We have no change to our previous advice given on 15 June 2018.

### Natural Resources Wales

*Correspondence received 20<sup>th</sup> July 2018*

Thank you for referring the above application, which we received on 11/06/2018.

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

*Requirement 1 – Detailed designs showing the proposed specifications of the intake weir*

Subject to the satisfaction of this requirement, we would request the following conditions:

*Condition 1 - The removal of French Drains as soon as the site construction works have completed.*

*Condition 2 - A Construction Environmental Management Plan must be submitted to and agreed in writing with the Local Authority in consultation with NRW prior to any works starting on site.*

*Condition 3 – Pre-commencement surveys for water voles*

### Fish

The intake weir will be an additional man-made barrier to fish migration and so will need to be designed to be easily passable to fish moving both upstream and downstream. The Fish section of the Environmental Statement refers to a rocky ramp easement, but no details of this structure are shown on either the technical drawings or the photomontage.

### *Requirement 1 – Detailed designs showing the proposed specifications of the intake weir*

The easement will be a significant structure. These drawings will need to be an accurate representation of the final design. The following should be adhered to when designing the intake structure:

- The intake design will need to incorporate a plunge pool with a minimum water depth of 300mm across the full width of the structure for downward migrating fish to fall into.
- There should be no concrete ledges/lips etc that could potentially damage fish as they drop downstream. Section 2-2 on the intake drawing appears to show a concrete ledge just below the Coanda screen and this is not acceptable.
- The crossing of the Nant y Car should be designed such that it does not present a barrier to fish migration as resident brown trout may use this tributary as spawning and juvenile habitat. The water crossing design should be approved by NRW's Fisheries Technical Specialist. Oversized culverts with depressed inverts are an effective way of maintaining fish passage at water course crossings.
- The proposal will need to include a fish pass/easement to ensure that fish can easily pass this structure in both an upstream and downstream direction.
- As the river has an island in the centre of the proposed intake weir consideration should be given to facilitating fish passage on either side of the island. The final design of the proposed fish passage facilities will need to be agreed with NRW's Fisheries Technical Specialist – fish passage at manmade barriers is a complex area and we would strongly advise you to discuss and agree suitable fish pass(es)/easement(s) with NRW's fisheries specialist at the earliest opportunity.

A fish rescue, using appropriate methods (i.e. electric fishing techniques) should be carried out prior to the construction of the intake structure. Consent must be granted from NRW before the fish rescue takes place.

No in-river works nor river diversions should be carried out during the main salmonid spawning period – 15th October to 15th May.

### Protected Sites

The proposal is within or near the following protected sites:

- Elenydd-Mallaen Special Protection Area (SPA)
- Elan Valley Woods Special Area of Conservation (SAC)
- Elenydd SAC
- Elenydd Site of Special Scientific Interest (SSSI)
- Caban Lakeside Woodlands SSSI
- Caeau Penglaneinion SSSI

We advise that under Regulation 61 of the Conservation of Habitats and Species Regulations 2010, your Authority needs to undertake a 'test of likely significant effects',



to assess whether the proposal is likely to have a significant effect on the Elenydd Mallaen SPA, Elenydd SAC and Elan Valley Woods SAC. If that assessment concludes there is likely to be a significant effect, NRW can also advise on the further, appropriate assessment that would be required under the Regulations.

We advise that the application submission will need to include adequate information for the Authority to undertake the Habitat Regulation Assessment.

The Authority must not normally agree to any plan or project unless it is sure beyond reasonable scientific doubt that it will not alone or in combination with other projects have an adverse effect on the integrity of a SAC, SPA or Ramsar site.

In providing an assessment of the likely impacts of the proposal, the submission will need to consider the conservation objectives for the sites, their current condition status and recent trends in the condition status for the various features. The core management plans including details of the conservation objectives can be obtained from the following section of the website:

<http://naturalresources.wales/conservation-biodiversity-and-wildlife/find-protected-areas-of-land-and-seas/designated-sites-search/?lang=en>

#### French Drains

We note the proposed use of French drains to control surface water runoff along the proposed penstock route. There is the potential French drains could disturb the natural flow of water in the area, and for naturally wet land to be drained.

*Condition 1: The removal of French Drains as soon as the site construction works have completed.*

We advise French drains should be removed as soon as the pipe laying construction works have ended, and they are no longer necessary. This is to minimise the potential impact of the drains adversely impacting the water levels of the habitats immediately next to the construction sites.

#### CEMP

It states in the Method Statement and Preliminary Ecological Appraisal that a Construction Environmental Management Plan (CEMP) will be produced. We would welcome this submission, and wish to be consulted when this document is available.

*Condition 2 - A Construction Environmental Management Plan must be submitted to and agreed in writing with the Local Authority in consultation with NRW prior to any works starting on site.*

The CEMP must include Pollution Prevention Measures as included in Section 12 of the Environmental Management Plan.

## Protected Species

### Water Voles

Water voles and their breeding and resting places are protected under the Wildlife and Countryside Act 1981 (as amended), and they are a material consideration for planning.

We note under section 12.4 of the Environment Management Plan pre-construction survey work will be undertaken to confirm the presence or absence of Water Voles. If water voles are present displacement techniques will be used to avoid impacting populations prior to construction works.

Considering the absence of known records of water voles in the area and the result of the preliminary ecological assessment, we are satisfied that pre-construction surveys for this species would be appropriate in this instance. We recommend appropriate conditions are in place to secure the delivery of appropriate mitigation and compensation measures for this species if found to be present.

#### *Condition 3 – Pre-commencement surveys for water voles*

Should a water survey confirm water voles to be present, we would wish to be re-consulted on the results of the survey. We may request the submission of a Reasonable Avoidance Measures Scheme / Conservation Strategy to be agreed prior to work commencing on site. We would wish to be re-consulted on the discharge of this condition should water voles be found to be present.

Also, should any water voles be found, a Conservation Licence will be required from NRW prior to any works commencing on site. Further information on these can be found on our website:

<https://naturalresources.wales/permits-and-permissions/protected-species-licensing/uk-protected-species-licensing/water-vole-licensing/?lang=en>

### Otters

Otters and their breeding and resting places are protected under the Wildlife and Countryside act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012), and they are a material consideration for planning.

To ensure no damage is caused to foraging or commuting otters in the area the following should be adhered to:

- Any excavations should not be left open overnight / a ramp should be provided to ensure otters can escape if they have fallen in.

We note no work is proposed to be undertaken overnight. If works in any exceptional circumstances works are to be undertaken overnight, where possible, lighting should be directional and focussed on the development area and away from the river, trees and any areas of shrub/scrub.

## Bats

Bats and their breeding and resting places are protected under the Wildlife and Countryside act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012), and they are a material consideration for planning.

We note the proposal includes the removal of trees. As noted above, trees should be removed outside of the bird breeding season. There is a possibility bats may be present, and therefore we recommend your Authority screens the application to assess if there is a reasonable likelihood of bats being present and the need for a bat survey in accordance with Technical Advice Note 5: Nature Conservation and Planning (paragraph 6.2.2).

Please consult us again if survey finds that bats are present at the site. In the meantime, we cannot confirm that the proposal would not harm or disturb bats, or a breeding site or resting place used by bats. Therefore, nor can we confirm that the proposal would not be detrimental the maintenance of a population of bats a favourable Conservation status in its natural range.

## Flood Risk

The site falls within flood zone C2, as defined by the Development Advice Map (DAM) referred to under TAN15 Development and Flood Risk (July 2004). Our current information shows the site to be partially within zone 2 and 3 of our Flood Map which is updated regularly.

The Flood Consequence Assessment (FCA) submitted in support of the proposal ('Afon Claerwen Hydropower Project Flood Risk Assessment, dated February 2018 by Ellergreen Hydro) indicates the powerhouse building will be designed to flood internally at a low level (Section 4.2) and critical electrical equipment will be located 1m above the floor level and above the predicted 1 in 100 year + CC flood level of 265.2mAOD. Flood resistant materials will also be used in the construction of the building.

It is proposed to construct a flood defence embankment and gabion wall at a level of 264mAOD around the powerhouse building (shown on the Powerhouse – General Layout Drawing, Hydropol, Nov 2017). The proposed level of the defence is below the predicted 1 in 100 year + CC flood level of 264.2mAOD (FCA Section 4.2) and would overtop in this scenario. The FCA is also unclear how gabions would be used as a flood defence without an additional impermeable barrier, although Sections 4.2 and 5 of the FCA indicate the building would flood internally from the tailrace regardless of external defences.

The presence of the powerhouse structure and protection embankments would result in local increases in flood level on the adjacent land, although from topography in the available Layout Plan – part 3 (Hydropol, Nov 2017) the nearby property is located significantly (~10m) above the level of the powerhouse and infrastructure and would not be subject to increased risk (Section 7 of the FCA).

Based on the FCA, we would not object to the proposal on the grounds of flood risk. We would recommend the advice in the FCA is incorporated into the design of the powerhouse building and associated infrastructure.

### Bryophytes

Based on the information provided, the location of the proposed works and following discussions between the developer's ecologist and the bryologists at NRW, we do not believe the proposal will impact bryophytes.

### Breeding Birds

The proposal is located partly within the:

- Elenydd-Mallaen Special Protection Area (SPA)
- Elan Valley Woods Special Area of Conservation (SAC)
- Elenydd SAC
- Elenydd Site of Special Scientific Interest (SSSI).

The Elenydd-Mallaen SPA is designated for its populations of breeding raptors. The habitats which support these raptors are protected by the SACs and SSSI.

The Environmental Statement under Section 10.3.2 states no raptor nests or flights were recorded in the area. The report also states red kite were recorded using the land around the development and cable route, and no nests were found within the survey area.

Works on vegetation and on trees should avoid the breeding bird season of early March to the end of August. To avoid areas of taller vegetation being used as nesting sites, we suggest the vegetation near the impoundment area at Craig y Mynach could be kept short prior to the breeding season.

### Further advice for the applicant

#### Flood Defence Consent

A flood defence consent will be required from the Lead Local Flood Authority (Powys CC) for any works affecting flow within the Afon Claerwen, an Ordinary watercourse. Please contact [land.drainage@powys.gov.uk](mailto:land.drainage@powys.gov.uk) or Powys CC Customer Services on 0845 602 7035 or 01597 827465 and ask for Graham Astley or Simon Crowther in the land drainage team.

## Pollution Prevention

The Pollution Prevention Measures as outlined in Section 12 of the Environmental Management Plan must be adhered to during the construction and operational phases of the development, to avoid pollution to the surrounding environment.

Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be 110% of the capacity of the tank. All filling points, gauges, vents and sight glasses must be located within the bund. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund, refuelling should always be supervised.

All works at the site must be carried out in accordance with the Guidance for Pollution Prevention GPP5 “Works and maintenance in or near water” has been updated in 2017 and can be found at:

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

Also, the work must be carried out in accordance with PPG6: ‘Working at construction and demolition sites’ which are available on the Gov.uk website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.

Although this document is withdrawn, the advice it provides is still relevant.

The watercourse should be monitored during the construction phase and work should stop if the watercourse is being impacted by pollution. No concrete, waterproofer, bitumen or mortar should come into contact with water until cured.

Should any contaminated water or materials enter or pollute the watercourse or groundwater, Natural Resources Wales must be notified immediately on our incident hotline: 03000 65 3000.

## Waste

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

No material is to be deposited within 10m of any watercourse without discussion with Natural Resources Wales.

## Abstraction and impoundment licence

We are aware this proposal has been granted an abstraction licence from Natural Resources Wales, and the applicants are currently applying for an impoundment licence.

The proposal must operate in accordance with the licences issued.

Please do not hesitate to contact us if you require further information or clarification on any of the above.

Our comments above only relate specifically to matters that are included on our checklist "Natural Resources Wales and Planning Consultations" (March 2015) which is published on our website: (<https://naturalresources.wales/media/5271/150302-natural-resources-wales-and-planning-consultations-final-eng.pdf>). We have not considered potential effects on other matters and do not *rule out the potential for the proposed development to affect other interests, including environmental interests of local importance*. The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/consents relevant to their development.

### *Correspondence dated 23<sup>rd</sup> November 2018 -*

Thank you for re-consulting Cyfoeth Naturiol Cymru / Natural Resources Wales with additional information about the above, which we received on 18/10/2018.

We recommend that you should only grant planning permission if you attach the following conditions. These conditions would address the significant concerns that we have identified and we would not object provided you attach them to the planning permission.

Condition 1 - The removal of French Drains as soon as the site construction works have completed.

Condition 2 - A Construction Environmental Management Plan must be submitted to and agreed in writing with the Local Authority in consultation with NRW prior to any works starting on site.

Condition 3 - Pre-commencement surveys for water voles

### Fish

We have reviewed the plans showing the specifications of the intake weir, which are:

- o Drawing name 'Intake - Ground plan & section', revision D, dated 07/2018 by Hydropol
- o Drawing name 'Intake - General layout', revision D, dated 11/2017 by Hydropol
- o Drawing name 'Intake - Fish Pass', revision D, dated 07/2018 by Hydropol

We are satisfied with these plans, and advise Requirement 1 of our previous letter has been addressed. This advice is without prejudice to the outcome of a Permit decision, where further information may be required.

A fish rescue using appropriate methods (i.e. electric fishing techniques) should be carried out prior to the construction of the intake structure. Consent must be granted from NRW before the fish rescue takes place.

No in-river works nor river diversions should be carried out during the main salmonid spawning period - 15th October to 15th May.

#### Protected Sites

The proposal is within or near the following protected sites:

- o Elenydd-Mallaen Special Protection Area (SPA)
- o Elan Valley Woods Special Area of Conservation (SAC)
- o Elenydd SAC
- o Elenydd Site of Special Scientific Interest (SSSI)
- o Caban Lakeside Woodlands SSSI
- o Caeau Penglaneinion SSSI

We advise that under Regulation 61 of the Conservation of Habitats and Species Regulations 2010, your Authority needs to undertake a 'test of likely significant effects', to assess whether the proposal is likely to have a significant effect on the Elenydd Mallaen SPA, Elenydd SAC and Elan Valley Woods SAC. If that assessment concludes there is likely to be a significant effect, NRW can also advise on the further, appropriate assessment that would be required under the Regulations.

We advise that the application submission will need to include adequate information for the Authority to undertake the Habitat Regulation Assessment.

The Authority must not normally agree to any plan or project unless it is sure beyond reasonable scientific doubt that it will not alone or in combination with other projects have an adverse effect on the integrity of a SAC, SPA or Ramsar site.

In providing an assessment of the likely impacts of the proposal, the submission will need to consider the conservation objectives for the sites, their current condition status and recent trends in the condition status for the various features. The core management plans

including details of the conservation objectives can be obtained from the following section of the website:

<http://naturalresources.wales/conservation-biodiversity-and-wildlife/find-protected-areas-of-land-and-seas/designated-sites-search/?lang=en>

### French Drains

We note the proposed use of French drains to control surface water runoff along the proposed penstock route. There is the potential French drains could disturb the natural flow of water in the area, and for naturally wet land to be drained.

Condition 1: The removal of French Drains as soon as the site construction works have completed.

We advise French drains should be removed as soon as the pipe laying construction works have ended, and they are no longer necessary. This is to minimise the potential impact of the drains adversely impacting the water levels of the habitats immediately next to the construction sites.

### CEMP

It states in the Method Statement and Preliminary Ecological Appraisal that a Construction Environmental Management Plan (CEMP) will be produced. We would welcome this submission, and wish to be consulted when this document is available.

Condition 2 - A Construction Environmental Management Plan must be submitted to and agreed in writing with the Local Authority in consultation with NRW prior to any works starting on site.

The CEMP must include Pollution Prevention Measures as included in Section 12 of the Environmental Management Plan.

### Protected Species

#### Water Voles

Water voles and their breeding and resting places are protected under the Wildlife and Countryside Act 1981 (as amended), and they are a material consideration for planning.

We note under section 12.4 of the Environment Management Plan pre-construction survey work will be undertaken to confirm the presence or absence of Water Voles. If water voles are present displacement techniques will be used to avoid impacting populations prior to construction works.



Considering the absence of known records of water voles in the area and the result of the preliminary ecological assessment, we are satisfied that pre-construction surveys for this species would be appropriate in this instance. We recommend appropriate conditions are in place to secure the delivery of appropriate mitigation and compensation measures for this species if found to be present.

### Condition 3 - Pre-commencement surveys for water voles

Should a water survey confirm water voles to be present, we would wish to be re-consulted on the results of the survey. We may request the submission of a Reasonable Avoidance Measures Scheme / Conservation Strategy to be agreed prior to work commencing on site. We would wish to be re-consulted on the discharge of this condition should water voles be found to be present.

Also, should any water voles be found, a Conservation Licence will be required from NRW prior to any works commencing on site. Further information on these can be found on our website:

<https://naturalresources.wales/permits-and-permissions/protected-species-licensing/uk-protected-species-licensing/water-vole-licensing/?lang=en>

### Otters

Otters and their breeding and resting places are protected under the Wildlife and Countryside act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012), and they are a material consideration for planning. To ensure no damage is caused to foraging or commuting otters in the area the following should be adhered to:

- o Any excavations should not be left open overnight / a ramp should be provided to ensure otters can escape if they have fallen in.

We note no work is proposed to be undertaken overnight. If works in any exceptional circumstances works are to be undertaken overnight, where possible, lighting should be directional and focussed on the development area and away from the river, trees and any areas of shrub/scrub.

### Bats

Bats and their breeding and resting places are protected under the Wildlife and Countryside act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (SI

2017 No. 1012), and they are a material consideration for planning.

We note the proposal includes the removal of trees. As noted above, trees should be removed outside of the bird breeding season. There is a possibility bats may be present, and therefore we recommend your Authority screens the application to assess if there is a reasonable likelihood of bats being present and the need for a bat survey in accordance with Technical Advice Note 5: Nature Conservation and Planning (paragraph 6.2.2).

Please consult us again if survey finds that bats are present at the site. In the meantime, we cannot confirm that the proposal would not harm or disturb bats, or a breeding site or resting place used by bats. Therefore, nor can we confirm that the proposal would not be detrimental the maintenance of a population of bats a favourable Conservation status in its natural range.

### Flood Risk

The site falls within flood zone C2, as defined by the Development Advice Map (DAM) referred to under TAN15 Development and Flood Risk (July 2004). Our current information shows the site to be partially within zone 2 and 3 of our Flood Map which is updated regularly.

The Flood Consequence Assessment (FCA) submitted in support of the proposal ('Afon Claerwen Hydropower Project Flood Risk Assessment, dated February 2018 by Ellergreen Hydro) indicates the powerhouse building will be designed to flood internally at a low level (Section 4.2) and critical electrical equipment will be located 1m above the floor level and above the predicted 1 in 100 year + CC flood level of 265.2mAOD. Flood resistant materials will also be used in the construction of the building.

It is proposed to construct a flood defence embankment and gabion wall at a level of 264mAOD around the powerhouse building (shown on the Powerhouse - General Layout Drawing, Hydropol, Nov 2017). The proposed level of the defence is below the predicted 1 in 100 year + CC flood level of 264.2mAOD (FCA Section 4.2) and would overtop in this scenario. The FCA is also unclear how gabions would be used as a flood defence without an additional impermeable barrier, although Sections 4.2 and 5 of the FCA indicate the building would flood internally from the tailrace regardless of external defences.

The presence of the powerhouse structure and protection embankments would result in local increases in flood level on the adjacent land, although from topography in the available Layout Plan - part 3 (Hydropol, Nov 2017) the nearby property is located significantly (~10m) above the level of the powerhouse and infrastructure and would not be subject to increased risk (Section 7 of the FCA).

Based on the FCA, we would not object to the proposal on the grounds of flood risk. We would recommend the advice in the FCA is incorporated into the design of the powerhouse building and associated infrastructure.

### Bryophytes

Based on the information provided, the location of the proposed works and following discussions between the developer's ecologist and the bryologists at NRW, we do not believe the proposal will impact bryophytes.

### Breeding Birds

The proposal is located partly within the:

- o Elenydd-Mallaen Special Protection Area (SPA)
- o Elan Valley Woods Special Area of Conservation (SAC)
- o Elenydd SAC
- o Elenydd Site of Special Scientific Interest (SSSI).

The Elenydd-Mallaen SPA is designated for its populations of breeding raptors. The habitats which support these raptors are protected by the SACs and SSSI. The Environmental Statement under Section 10.3.2 states no raptor nests or flights were recorded in the area. The report also states red kite were recorded using the land around the development and cable route, and no nests were found within the survey area.

Works on vegetation and on trees should avoid the breeding bird season of early March to the end of August. To avoid areas of taller vegetation being used as nesting sites, we suggest the vegetation near the impoundment area at Craig y Mynach could be kept short prior to the breeding season.

### Advice for the Developer

#### Flood Defence Consent

A flood defence consent will be required from the Lead Local Flood Authority (Powys CC) for any works affecting flow within the Afon Claerwen, an Ordinary watercourse. Please contact [land.drainage@powys.gov.uk](mailto:land.drainage@powys.gov.uk) or Powys CC Customer Services on 0845 602 7035 or 01597 827465 and ask for Graham Astley or Simon Crowther in the land drainage team.

#### Pollution Prevention

The Pollution Prevention Measures as outlined in Section 12 of the Environmental Management Plan must be adhered to during the construction and operational phases of the development, to avoid pollution to the surrounding environment.

Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be 110% of the capacity of the tank. All filling points, gauges, vents and sight glasses must be located within the bund. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund, refuelling should always be supervised.

All works at the site must be carried out in accordance with the Guidance for Pollution Prevention GPP5 "Works and maintenance in or near water" has been updated in 2017 and can be found at:

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

Also, the work must be carried out in accordance with PPG6: 'Working at construction and demolition sites' which are available on the Gov.uk website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.

Although this document is withdrawn, the advice it provides is still relevant.

The watercourse should be monitored during the construction phase and work should stop if the watercourse is being impacted by pollution. No concrete, waterproofer, bitumen or mortar should encounter water until cured.

Should any contaminated water or materials enter or pollute the watercourse or groundwater, Natural Resources Wales must be notified immediately on our incident hotline: 03000 65 3000.

## Waste

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

No material is to be deposited within 10m of any watercourse without discussion with Natural Resources Wales.

## Abstraction and Impoundment Licences

We are aware this proposal has been granted an abstraction licence from Natural Resources Wales, and the applicants are currently applying for an impoundment licence. The proposal must operate in accordance with the licences issued.

Please do not hesitate to contact us if you require further information or clarification of any of the above.

Our comments above only relate specifically to matters that are included on our consultation topics list (September 2018) which is published on our website:

(<https://cdn.naturalresources.wales/media/686847/dpas-consultation-topics-august-2018-eng.pdf?mode=pad&rnd=131819256840000000>). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance.

The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/consents relevant to their development.

#### County Ecologist

Thank you for consulting me with regards to planning application P/2018/0234 which concerns an application for the construction of a Hydro Electric Scheme, to include the erection of a Powerhouse, Transformer and Intake, and all associated works at The River Claerwen, Elan Valley, Rhayader, Powys.

An Environmental Statement has been submitted with the application as it was determined that the proposed development should be subject to an Environmental Impact Assessment. The proposed development comprises the installation of a penstock for 1.8km, construction of an intake weir, overflow chamber, power house, pressure station and tailrace.

The proposed development has been subject to an Ecological Impact Assessment undertaken following guidance published by CIEEM. It was identified that the principal ecological issues for consideration were:

- Potential effects on statutory and non-statutory designated area;
- Long term or short term direct habitat loss due to land take during construction;
- Indirect disturbance effects i.e. the displacement of species as a consequence of construction work, or due to the operational phase of the development; and
- The potential mortality of ecological receptors vulnerable during the operational phase of the development.

The proposed development is partly located with the Elenydd –Mallaen SPA and Elenydd SSSI, the proposed cable route would run through the most westerly edge of the Elan Valley Woodlands SAC/Caban Lakeside Woodlands SSSI. A number of other statutory

designated sites are located within close proximity to the proposed development - The Elan Valley Woodlands SAC – nearest stand of woodland is situated approximately 260m north of the pipeline route, Elenydd SAC – the boundaries of the SAC are over 500m east of the proposed development at its nearest point, and Caeau Penglaneinion SSSI – the proposed cable route is adjacent to the eastern edge of the SSSI. The EclA identifies that there are no sites designated for bat, dormouse or great crested newt interest within 2km of the proposed development.

Given the proximity of the proposed development to the Elenydd –Mallaen SPA, The Elan Valley Woodlands SAC and Elenydd SAC in accordance with the requirements of Regulations 63 of the Conservation of Habitats and Species Regulations 2017 the proposed development has been subjected to a Habitats Regulations Assessment. Screening of the proposed development has concluded that there would be No Likely Significant Effect to the European Sites concerned either alone or in combination with other plans or projects. This screening assessment has considered the potential for a Likely Significant Negative Effect as a result of the proposed development in the absence of mitigation (in light of the 2018 CJEU ruling). I have attached copies of the HRA Screening Records for each site for your records.

A desk study was undertaken in 2017 to establish the distribution and sensitivities of sites designated for their biodiversity value and to gather information on ecological records for the site and the wider environment which may be affected by the proposed development. Field surveys were undertaken in May 2017 (habitat survey), April-June 2017 (breeding birds), May 2017 and January 2018 (otter).

The breeding bird survey confirmed the presence of 49 species throughout the study area, with 20 species either listed on the RSPBs Birds of Conservation Concern red or amber lists or protected by the Environment (Wales) Act 2016, Wildlife and Countryside Act 1981 (as amended) or the Birds Directive. No raptor nests or flights were recorded within the survey area – which encompassed the whole pipeline route including a wide survey area to account for potential evolution of the layout design. 12 species of bird were identified as having potential to be affected by the laying of the connection to the grid. Red kite were recorded using the land around the development but no nests were found within the survey area. Peregrine were observed above the crags along Coed y Foel and Graig y Foel and were considered to be potentially using the crags for nesting although this could not be fully confirmed. The EclA conclude that the potential impact of the proposed development to breeding birds is slight adverse due to potential impacts from habitat loss or mortality/injury in the absence of mitigation.

No burrows or specific evidence of water vole activity e.g. latrines, feeding lawns, or pathways were found during the survey of suitable watercourses, however the EclA identifies that NRW confirmed a record of water vole droppings approximately 130m west of the intake weir on a small watercourse that joins the river. The location of the confirmed water vole activity will not be directly affected by the proposed development, however the EclA acknowledges that given the confirmation of water vole activity in the local area there is potential for future presence of this species along watercourse in closer proximity to the

proposed works. It is therefore concluded that in the absence of mitigation there is potential for a slight adverse impact to water vole as a result of the proposed development.

A number of features suitable to be used by otter were identified during the survey, evidence of otter activity was also identified in the form of otter spraint. Whilst evidence of otter activity was noted during the survey no breeding or natal sites were identified during the survey as such the proposed development site is considered to be used for foraging and commuting purposes and no impacts to breeding or resting sites are considered likely. In the absence of mitigation the proposed development is considered to have potential for a slight adverse impact to otter.

No evidence of badger setts was identified within the proposed development site and associated survey area, evidence of badger activity was noted within habitat along the cable route. As such the EclA identifies that badgers are active in the area and should be considered to be using the proposed development site for commuting between different areas of suitable foraging habitat.

No bat roost features were identified with the development boundary and trees to be removed were found to lack suitable Potential Roost features. The upland habitat was considered to be of generally low quality for bats with the exception of the river corridor itself.

Records of two reptile species were identified in the local area, no hibernacula or features that could provide shelter for reptile species were found along the cable route. The EclA concludes that in the absence of mitigation potential impacts to local reptile populations would be minimal, however the risk of absolute harm remains.

The penstock route predominantly crosses areas of semi improved acid grassland and improved grassland with occasional sections of marshy grassland, flush and broadleaved woodland. During the construction phase there will be a direct loss of a linear strip approximately 2.5km of land spanning approximately 20m wide plus associated construction compounds. The total land take required for construction is 6.22ha. Soils removed to lay the pipeline will be stockpiled along the pipeline before reinstating and landscaping once each section is complete. The pipeline has been routed to minimise the impact of the proposed development to habitats of significant value acid grassland and semi improved grassland accounts for 57% of the total land take within the development, 2.69ha of habitat will be temporarily lost and approximately 0.13ha of habitat will be permanently lost to the powerhouse, tailrace and intake chamber. A section of wet modified bog is located at the intake weir and will be lost to the development, the section of the habitat lost is approximately 25% of the habitat in that location, the section lost is a drier part of the bog which is heavily degraded becoming encroached with bracken and acid grassland. A small section of broadleaved semi-natural woodland and severance of 16.5m of species poor intact hedgerow will result from the proposed development, the EclA identifies that in the absence of mitigation there would be a moderate impact to the local ecosystem as a result of removing these features.

In addition there will be a temporary loss of 0.52ha of dry dwarf shrub heath to lay the connection cable – no habitats will be permanently lost to the laying of the cable.

Mitigation measures for the identified impacts to features of biodiversity value have been identified in Section 12 and detailed in Table 13 of the Environmental Statement including habitat removal and reinstatement, dust suppression, avoidance and protection of watercourses, pre-commencement water vole survey, mitigation for birds, small mammals, badger, otter, amphibians and reptiles as well as management and enhancement measures. The mitigation measures proposed are considered to be acceptable and in accordance with current best practice and guidelines. Having reviewed the identified mitigation measures in light of the identified impacts to features of biodiversity value from the proposed development it is considered that subject to implementation and adherence to the identified mitigation there would be no negative impacts to or significant loss of biodiversity as a result of the proposed development. It is recommended that implementation of the identified mitigation measures is secured through an appropriately worded planning condition.

In addition to the identified mitigation measures it has been identified within the Environmental Statement and Preliminary Ecological Appraisal that environmental protection measures during the construction phase would be implemented via a Construction Environmental Management (CEMP). It is recommended that the submission and approval of a CEMP prior to commencement of development is secured through an appropriately worded planning condition.

The Environmental Statement also makes reference to the production of a Habitat Management Plan (HMP) which will include the following actions:

- Management of the habitats and tasks to maintain these;
- Monitoring of heath and grasslands and appropriate revisions to management prescriptions;
- Management and eradication of invasive species through appropriate and legal techniques.

The production of a HMP is welcomed and has potential to result in net benefits for biodiversity (biodiversity enhancements) in accordance with the requirements of Part 1 Section 6 of the Environment (Wales) Act 2016 which requires LPAs to seek to maintain and enhance biodiversity through the planning process. It is recommended that the submission and approval of a HMP is secured through an appropriately worded planning condition.

Therefore should you be minded to approve the application I recommend inclusion of the following conditions:

*The development shall be undertaken strictly in accordance with the mitigation measures identified in Section 12 and detailed in Table 13 of the Afon Caerwen Hydropower Project Environmental Statement produced by Ellergreen Hydro Ltd dated 12th February 2018 .*



*The identified measures shall be adhered to and implemented in full and maintained thereafter.*

Reason: To comply with Powys County Council's LDP Policy DM2, in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

*No development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include but not be limited to the following:*

- a) *Reasonable Avoidance Measures for the Development including:*
  - *Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
  - *The location and timing of sensitive works to avoid harm to biodiversity features.*
  - *The times during construction when specialist ecologists need to be present on site to oversee works.*
  - *Use of protective fences, exclusion barriers and warning signs.*
- b) *A detailed Pollution Prevention Plan to prevent pollution of surface water and waterbodies from construction activities*
- c) *Responsible persons and lines of communication.*
- d) *The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*

*The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.*

Reason: To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.

*Prior to first operational use of the development a Habitat Management Plan shall be submitted to and agreed with the Local Planning Authority. The Plan shall include but not be limited to the following:*

- *Management of the habitats and tasks to maintain these;*
- *Monitoring of heath and grasslands and appropriate revisions to management prescriptions;*
- *Management and eradication of invasive species through appropriate and legal techniques.*

*The approved Habitat Management Plan shall be adhered to and implemented in full strictly in accordance with the approved details and maintained thereafter.*

Reason: To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.

In addition I recommend inclusion of the following informatives:

### Protected Species

Work should halt immediately and Natural Resources Wales (NRW) contacted for advice in the event that protected species are discovered during the course of the development. To proceed without seeking the advice of NRW may result in an offence under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife & Countryside Act 1981 (as amended) being committed. NRW can be contacted at: Tel: 0300 065 3000

### Birds - Wildlife and Countryside Act 1981 (as amended)

All nesting birds, their nests, eggs and young are protected by law and it is an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

### Reptiles – Wildlife & Countryside Act 1981 (as amended)

All species of reptiles known to occur within Powys, namely the common lizard, slow-worm, grass snake and adder, are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore an offence to:

- Intentionally kill or injure these species of reptiles,
- Trade (live or dead animals) i.e. sale, barter, exchange, transporting for sale and advertising to sell or to buy.

The maximum penalty that can be imposed - in respect of each offence - is a fine of up to 5,000 pounds, six months imprisonment or both.

In addition, these species of reptiles are also listed in Part 1 Section 7 of the Environment (Wales) Act 2016 – which is a list of the living organisms of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales. Species of reptiles known to occur in Powys are also listed as Species of Conservation Concern on the Powys LBAP.

If reptiles are discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and/or the Council's Ecologist.

Otters – Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

Otters are known to be present on the majority of watercourses in Powys. The otter is fully protected under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2017.

It is therefore an offence to:

- Deliberately capture, injure or kill an otter;
- Deliberately disturb an otter in such a way as to be likely to significantly affect the local distribution or abundance of otters or the ability of any significant group of otters to survive, breed, rear or nurture their young;
- Damage or destroy an otter holt;
- Intentionally or recklessly disturb any otter whilst it is occupying a holt; or
- Intentionally or recklessly obstruct access to a holt.

Reasonable avoidance measures need to be implemented to ensure minimal impact to otter activity in the local area. These will include:

- No night working or lighting of the works area;
- Ensuring that no barriers to movement of otters along the river are created;
- Keep unnecessary noise to a minimum during the works; and
- Do not light any fires close to areas of vegetation.

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

It is an offence for any person to:

- Intentionally kill, injure or take any bats.

- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017 that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0345 1300 228 or email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk)

Water Vole – Wildlife & Countryside Act 1981 (as amended)

The water vole is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 and is a priority conservation species.

It is therefore an offence for any person to:

- intentionally capture, kill or injure water voles
- damage, destroy or block access to their places of shelter or protection (on purpose or by not taking enough care)
- disturb them in a place of shelter or protection (on purpose or by not taking enough care)
- possess, sell, control or transport live or dead water voles or parts of them (not water voles bred in captivity)

If presence of water vole is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. The maximum penalty that can be imposed - in respect of each offence - is an unlimited fine and up to six months imprisonment or both.

Badger – Protection of Badgers Act 1992

Badgers and their setts (tunnels and chambers where they live) are protected by law.

It is therefore an offence for any person to:

- intentionally capture, kill or injure a badger
- damage, destroy or block access to their setts
- disturb badgers in setts
- treat a badger cruelly
- deliberately send or intentionally allow a dog into a sett
- bait or dig for badgers

If presence of badger sett is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. The maximum penalty that can be imposed - in respect of each offence - is an unlimited fine and up to six months imprisonment or both.

## Welsh Water

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

## SEWERAGE

We can confirm we currently have no objections to this application.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com). Please quote our reference number in all communications and correspondence.

## **Representations**

The proposed development has been advertised by site display and within the local press. At the time of writing this report, no third party representations have been received by Development Management.

## **Planning History**

SO/2017/0001 - Screening Opinion - Proposed hydro electricity generation facility: 1.1.MW run-of-river hydro station on the River Claerwen. EIA required.

SC/2017/0004 – Request for a Scoping Opinion. Opinion provided.

## **Principal Planning Constraints**

- Scheduled Ancient Monuments within proximity of the site;
- Public Rights of Way Network within proximity of the site;
- Site located within or near to a European Protected Site.

## **Principal Planning Policies**

### National Planning Policy

Planning Policy Wales (2018)

Technical Advice Note 5 – Nature Conservation and Planning (2009)

Technical Advice Note 10 – Renewable Energy (2004)

Technical Advice Note 15 – Development and Flood Risk (2004)

Technical Advice Note 16 – Sport, Recreation and Open (2009)  
Technical Advice Note 18 – Transport (2007)  
Technical Advice Note 23 – Economic Development (2014)  
Technical Advice Note 24 – The Historic Environment (2017)

### Local Planning Policy

Powys Local Development Plan (2018)

SP7 – Safeguarding of Strategic Resources and Assets  
DM1 – Planning Obligations  
DM2 – The Natural Environment  
DM4 – Landscape  
DM5 – Development and Flood Risk  
DM6 – Flood Prevention Measures and Land Drainage  
DM7 – Dark Skies and External Lighting  
DM13 – Design and Resources  
RE1 – Renewable Energy

### **Other Legislative Considerations**

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

### **Officer Appraisal**

#### Site Location and Description

The intention of this scheme is to make use of the flows from the Claerwen Reservoir as they pass from the Claerwen Dam to the Dolmynach Reservoir, to generate power. It is proposed to construct an intake weir (E288377, N262776) approximately 1.5km downstream of the Claerwen Dam which would take the form of a low concrete weir spanning the two sections of the river. From the intake a pipeline (1800mm diameter) will be laid underground and will run alongside the Afon Claerwen from the intake to the powerhouse.

The proposed powerhouse will be located on agricultural land located to the north of Rhiwnant farm and measures approximately 15.6 metres in length (max) by 13.5 metres in width (max) reaching a ridge height of approximately 8 metres.. External materials will comprise of timber cladding (walls) together with a corrugated steel roof.

## Introduction

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise

## Environmental Impact Assessment Regulations 2017

Part 2 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 details development proposals and associated thresholds defining where a development proposal constitutes EIA development. These are contained in Schedule 1 and 2 of the Regulations. Schedule 1 of the regulations lists those developments where EIA is mandatory and Schedule 2 where the development must be screened to determine if it is EIA development.

A screening opinion was received and considered by the LPA under planning reference SO/2017/0001. The screening opinion confirmed that the proposed hydro scheme, whilst not Schedule 1 development, exceeded the relevant thresholds within Schedule 2 and when assessed in accordance with Schedule 3, was considered to constitute EIA development. As such, the current submission is accompanied by an EIA which is considered to satisfy the requirements of the aforementioned Regulations.

## Principle of Development

Welsh Government targets indicate that by 2030, it is envisaged that Wales will be in a position to generate 70% of its electricity consumption from renewable energy sources. Paragraph 5.7.17 of Planning Policy Wales (2018) emphasises that the planning system has an active role in helping to ensure the delivery of these targets, and therefore Planning Authorities are encouraged to facilitate all forms of renewable and low carbon energy development.

PPW confirms that Planning authorities should give significant weight to the Welsh Government's targets to increase renewable and low carbon energy generation, as part of the overall approach to tackling climate change and increasing energy security. In circumstances where protected landscape, biodiversity and historical designations and buildings are considered in the decision making process, only the direct irreversible impacts on statutorily protected sites and buildings and their settings (where appropriate) should be considered. In all cases, considerable weight should be attached to the need to produce more energy from renewable and low carbon sources, in order for Wales to meet its carbon and renewable targets.

LDP Policy RE1 supports the delivery of national policy by encouraging renewable, low and zero carbon energy projects, subject to all material planning considerations being satisfied. Given the policy presumption in favour of appropriate renewable energy projects, Officers consider that the proposed hydro scheme is fundamentally acceptable in principle.

## Landscape and Visual Impact

Policy DM4 of the Powys LDP confirms that proposals for new development outside the Towns, Large Villages, Small Villages and Rural Settlements defined in the Settlement Hierarchy must not, individually or cumulatively, have an unacceptable adverse effect, on the valued characteristics and qualities of the Powys landscape. All proposals will need to:

1. Be appropriate and sensitive in terms of integration, siting, scale and design to the characteristics and qualities of the landscape including its: topography; development pattern and features; historical and ecological qualities; open views; and tranquillity; and
2. Have regard to LANDMAP, Registered Historic Landscapes, adjacent protected landscapes (National Parks and Areas of Outstanding Natural Beauty) and the visual amenity enjoyed by users of both Powys landscapes and adjoining areas.

For the purposes of LANDMAP, the proposed powerhouse is located within the Claerwen Valley aspect area which is defined as a varied upland mosaic pastoral valley with sides running down from 430m AOD to 260m AOD. The valley appears very rugged and bleak in parts as the upland moorland vegetation of the Cambrian Mountains runs down close to the valleys bottom in the upper reaches. The fields are relatively small and are being encroached on by gorse and bracken in parts. The river is rocky with small gorges in places and has only sparse vegetation in the upper valley, but this thickens into mature deciduous woodland in places. Small conifer blocks and occasional conifers reinforce the upland character. A conifer plantation with deciduous edges clothes the steep valley side above Caban Coch Reservoir while a rocky outcrop rises above the dam. Generally deciduous trees are very important in enclosing the lower hillsides. Stone walls (river rounded stones) are evident in places. LANDMAP recognises the attractive, tranquil and remote qualities of the aspect area and values the overall landscape of high value.

Officers acknowledge that the proposed powerhouse represents a substantial addition to the landscape whilst the associated engineering works will result in a visual change to the sites rural surroundings. Nevertheless, it is considered that the proposed building is of a scale in keeping with existing agricultural buildings, which when viewed from the nearby highway or wider area, would resemble a building characteristic of the rural area. As such, whilst acknowledging the likely landscape and visual impact associated with the proposed development, given the siting and design of the building including proposed materials, it is not considered that this impact will be unacceptable. With respect to the proposed intake weir, given the location and scale of the development, it is not considered that this aspect of the development will detract from the character and appearance of the sites surroundings.

In light of the above, Officers are satisfied that the proposed development will not detract from the character and appearance of the landscape or compromise its sensory qualities



highlighted by LANDMAP. The proposal is therefore considered to be in accordance with policies SP7, DM4 and DM13 of the Powys LDP.

### Highway Safety and Movement

Policy DM13 of the Powys LDP confirms that the development has been designed and located to minimise the impacts on the transport network - journey times, resilience and efficient operation - whilst ensuring that highway safety for all transport users is not detrimentally impacted upon. Development proposals should meet all highway access requirements, (for all transport users), vehicular parking standards and demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development.

The application is accompanied by a Traffic Management Plan (TMP) confirms that all traffic associated with the development will travel from the North East along the B4518. The B4518 becomes the county class III highway (C1206) just beyond the Elan Village which will facilitate access to the development site. Due to the constraints of the existing highway network and limited scope for improvements, the TMP confirms that not all vehicles will be able to access the site directly and therefore provision has been made for larger deliveries (materials) to be deposited at Llanerch and transported to Rhiwnant (powerhouse location) by tractor and trailer.

Following initial consultation, additional information was requested by the Highway Authority. At the time of writing this report, unfortunately comments in respect of the additional details received have not been received by Officers. Nevertheless, Development Management is satisfied that an appropriate response can be secured in advance of the Committee Meeting which will be reported to Members in a report update or verbal presentation.

### Ecology and Biodiversity

In accordance with LDP policy DM2, development proposals shall demonstrate how they protect, positively manage and enhance biodiversity and geodiversity interests including improving the resilience of biodiversity through the enhanced connectivity of habitats within, and beyond the site.

The proposed development has been subject to an Ecological Impact Assessment undertaken following guidance published by CIEEM. It was identified that the principal ecological issues for consideration were:

- Potential effects on statutory and non-statutory designated area;
- Long term or short term direct habitat loss due to land take during construction;
- Indirect disturbance effects i.e. the displacement of species as a consequence of construction work, or due to the operational phase of the development; and

- The potential mortality of ecological receptors vulnerable during the operational phase of the development.

The proposed development is partly located with the Elenydd –Mallaen SPA and Elenydd SSSI, the proposed cable route would run through the most westerly edge of the Elan Valley Woodlands SAC/Caban Lakeside Woodlands SSSI. A number of other statutory designated sites are located within close proximity to the proposed development - The Elan Valley Woodlands SAC – nearest stand of woodland is situated approximately 260m north of the pipeline route, Elenydd SAC – the boundaries of the SAC are over 500m east of the proposed development at its nearest point, and Caeau Penglaneinion SSSI – the proposed cable route is adjacent to the eastern edge of the SSSI. The EIA identifies that there are no sites designated for bat, dormouse or great crested newt interest within 2km of the proposed development.

Given the proximity of the proposed development to the Elenydd –Mallaen SPA, The Elan Valley Woodlands SAC and Elenydd SAC in accordance with the requirements of Regulations 63 of the Conservation of Habitats and Species Regulations 2017 the proposed development has been subjected to a Habitats Regulations Assessment. Screening of the proposed development has concluded that there would be No Likely Significant Effect to the European Sites concerned either alone or in combination with other plans or projects. This screening assessment has considered the potential for a Likely Significant Negative Effect as a result of the proposed development in the absence of mitigation (in light of the 2018 CJEU ruling).

The application has been considered by both Natural Resources Wales (NRW) and the County Ecologist. Following consultation, responses have been received from both consultees which confirm no objection to the proposed hydro scheme subject to appropriate conditions being attached to any planning permission granted. Subject to the recommended conditions being attached, Officers are satisfied that the proposed development will not unacceptably adversely affect protected species or designated sites compliant with policies SP7, DM2 and DM13 of the Powys LDP, Technical Advice Note 5 – Nature Conservation and Planning together with Planning Policy Wales.

### Cultural Heritage Assets

Technical Advice Note 24 – The Historic Environment (2017) confirms the presumption against proposals which would involve significant alteration or cause damage to a Scheduled Ancient Monument and its setting.

In their response, Cadw identified a number of Scheduled Ancient Monuments located within a 1km buffer of the application site, namely;

- BR208 Ring Cairn on Esgair Ceiliog
- BR209 Prehistoric Enclosure & Settlement Site on Craig y Llysiu
- BR287 Cerrig Llwydion Deserted Rural Settlement.
- BR208 & BR209 are not inter-visible with the proposal.

The Archaeological Desk Based assessment accompanying the planning application concludes that although construction works will be visible from the aforementioned assets, no scheduled monument will be directly affected by the proposal during construction. The assessment further notes that Cerrig Llwydion deserted rural settlement (BR287) will be visible from the intake weir when completed, however there will be no impact adverse upon its setting. In commenting on the submitted assessment, Cadw indicate that they concur with the findings of the assessment and conclude that given the scale of the intake weir, it is considered that any damage caused to the setting of the SAM would be very slight and not significant.

Clwyd Powys Archaeological Trust (CPAT) have also commented on the proposed scheme and confirmed that overall the archaeological impact is low and where identified sites may have been directly impacted they have been successfully avoided by design. It is understood that there is some potential for previously unrecorded archaeology to be revealed within the compound areas and during construction of the pipeline between the intake and powerhouse however a watching brief condition has been recommended to ensure a suitable record of any remains uncovered during earthworks is made. In respect of the proposed cable route, CPAT confirm that this will have either no impact, or a very minor impact, to the sites identified along its route and due to the narrow cut proposed for the cable trench the potential for seeing significant new archaeology is considered to be low or negligible.

In accordance with PPW, it is not considered that the potential harm identified is direct or irreversible and therefore the proposal is considered to be compliant with planning policy. Subject to the imposition of the recommended condition, it is considered that a suitable record of any archaeological remains can be made. For the reasons stated above, the proposal is considered to be in accordance with relevant planning policies.

#### Development and Flood Risk

The site falls within flood zone C2, as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15- Development and Flood Risk (2004). Current information shows the site to be partially within zone 2 and 3 of NRW's Flood Map which is updated regularly.

The Flood Consequence Assessment (FCA) submitted in support of the proposal ('Afon Claerwen Hydropower Project Flood Risk Assessment, dated February 2018 by Ellergreen Hydro) indicates the powerhouse building will be designed to flood internally at a low level (Section 4.2) and critical electrical equipment will be located 1m above the floor level and above the predicted 1 in 100 year + CC flood level of 265.2mAOD. Flood resistant materials will also be used in the construction of the building.

It is proposed to construct a flood defence embankment and gabion wall at a level of 264mAOD around the powerhouse building (shown on the Powerhouse – General Layout Drawing, Hydropol, Nov 2017). The proposed level of the defence is below the predicted 1

in 100 year + CC flood level of 264.2mAOD (FCA Section 4.2) and would overtop in this scenario. The FCA is also unclear how gabions would be used as a flood defence without an additional impermeable barrier, although Sections 4.2 and 5 of the FCA indicate the building would flood internally from the tailrace regardless of external defences.

The presence of the powerhouse structure and protection embankments would result in local increases in flood level on the adjacent land, although from topography in the available Layout Plan – part 3 (Hydropol, Nov 2017) the nearby property is located significantly (~10m) above the level of the powerhouse and infrastructure and would not be subject to increased risk (Section 7 of the FCA).

Based on the FCA as above, NRW confirm that they would not object to the proposal on the grounds of flood risk. On the basis of the above observations and advice received, Officers are satisfied that the risks and consequences of flooding at this location can be managed and therefore consider the proposal to be compliant with the relevant planning policies.

#### Impact on Public Rights of Way

Policy DM13 confirms that development proposals will only be permitted where the public rights of way network or other recreation assets listed in Policy SP7 (3) are enhanced and integrated within the layout of the development proposal; or appropriate mitigation measures are put in place where necessary.

Following initial consultation, additional information was requested by Countryside Services in respect of the Byway Open to All Traffic (BOAT). At the time of writing this report, Members are advised that the applicant is in continued dialogue with Countryside Services. From discussions with Countryside Services, it is understood that the outstanding issues are capable of being overcome subject to conditions being attached. A further update on this matter will be provided within the Committee Update or verbal presentation.

#### Planning Obligations

Policy DM1 states;

Planning obligations will be sought by agreement with applicants, where necessary, to ensure that:

1. The development provides for adequate infrastructure necessary to serve the proposal, and that satisfactory maintenance and / or restoration arrangements are achieved;
2. Significant adverse socio-economic and environmental impacts are addressed and mitigated;
3. Benefits are secured in the public interest to meet the additional demands of development proposals on local communities.

Notwithstanding the Town and Community Councils' request for a financial contribution, on reviewing Welsh Government Circular – The Use of Planning Controls for Development Management, Officers do not consider that a condition requiring a financial contribution would meet the tests required. No evidence has been provided to indicate that a financial contribution is necessary to make the development acceptable or relevant to the development proposed and thus, in the opinion of Officers fails to comply with the relevant tests. Members however are advised this that does not prevent negotiations between the developer and local community, independent of the determination of this planning application.

## **RECOMMENDATION**

Having carefully considered the proposed development, Officers are satisfied that the proposal will positively contribute to the achievement of renewable energy targets as detailed within Planning Policy Wales whilst safeguarding the character and appearance of the landscape, historic and ecological designations.

The Environmental Information submitted has been considered in full in the determination of this application.

As such, the recommendation is one of approval subject to the conditions detailed below;

Conditions:

1. The development to which this permission relates shall be begun no later than the expiration of five years from the date of this permission.
2. The development shall be carried out strictly in accordance with the approved plans and documents.
3. No development or site clearance shall commence until the local planning authority have been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the local planning authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the local planning authority within two months of the archaeological fieldwork being completed.
4. The development hereby approved shall be undertaken strictly in accordance with Section 12 and Table 13 of the Afon Caerwen Hydropower Project Environmental Statement produced by Ellergreen Hydro Ltd dated 12th February 2018 . The identified measures shall be adhered to and implemented in full and maintained thereafter.

5. No development shall commence (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include but not be limited to the following:
  - a) Reasonable Avoidance Measures for the Development including:
    - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
    - The location and timing of sensitive works to avoid harm to biodiversity features.
    - The times during construction when specialist ecologists need to be present on site to oversee works.
    - Use of protective fences, exclusion barriers and warning signs.
  - b) A detailed Pollution Prevention Plan to prevent pollution of surface water and waterbodies from construction activities
  - c) Responsible persons and lines of communication.
  - d) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The development shall thereafter be undertaken strictly in accordance with the CEMP as approved.

6. Prior to first operational use of the development a Habitat Management Plan shall be submitted to and agreed with the Local Planning Authority. The Plan shall include but not be limited to the following:
  - Management of the habitats and tasks to maintain these;
  - Monitoring of heath and grasslands and appropriate revisions to management prescriptions;
  - Management and eradication of invasive species through appropriate and legal techniques.

The development shall thereafter be undertaken strictly in accordance with the Habitat Management Plan as approved.

7. In the event that the pre-commencement water vole survey (as required by condition 4) confirm water voles to be present, the survey shall be submitted to and approved in writing by the Local Planning Authority. The report shall be accompanied by Reasonable Avoidance Measures/Conservation Strategy where appropriate. Thereafter, the development shall be undertaken strictly in accordance with the details as approved.
8. Within 28 days following the completion of the pipe laying construction, the French Drains shall be removed and the land re-instated to its former condition.

Reasons:

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
1. To ensure adherence to the plans stamped as approved in the interests of clarity and a satisfactory development.
2. To secure preservation by record of any archaeological remains which may be revealed during ground excavations for the consented development in accordance with policies SP7 and DM13 of the Powys Unitary Development Plan (2018), Technical Advice Note 24 – The Historic Environment (2017) and Planning Policy Wales (2018).
3. To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.
4. To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.
5. To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.
6. To comply with Powys County Council's UDP Policies DM2 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning, the Conservation of Habitats and Species Regulations 2017, the Wildlife & Countryside Act 1981 (as amended) and Section 6 of the Environment (Wales) Act 2016.
7. This is to minimise the potential impact of the drains adversely impacting the water levels of the habitats immediately next to the construction sites in accordance with policies DM5 and DM6 of the Powys Local Development Plan (2018), Technical Advice Note 15 – Development and Flood Risk (2004) and Planning Policy Wales (2018).

**Informatives**

Protected Species

Work should halt immediately and Natural Resources Wales (NRW) contacted for advice in the event that protected species are discovered during the course of the development. To proceed without seeking the advice of NRW may result in an offence under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife & Countryside Act 1981 (as amended) being committed. NRW can be contacted at: Tel: 0300 065 3000

#### Birds - Wildlife and Countryside Act 1981 (as amended)

All nesting birds, their nests, eggs and young are protected by law and it is an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

#### Reptiles – Wildlife & Countryside Act 1981 (as amended)

All species of reptiles known to occur within Powys, namely the common lizard, slow-worm, grass snake and adder, are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore an offence to:

- Intentionally kill or injure these species of reptiles,
- Trade (live or dead animals) i.e. sale, barter, exchange, transporting for sale and advertising to sell or to buy.

The maximum penalty that can be imposed - in respect of each offence - is a fine of up to 5,000 pounds, six months imprisonment or both.

In addition, these species of reptiles are also listed in Part 1 Section 7 of the Environment (Wales) Act 2016 – which is a list of the living organisms of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales. Species of reptiles



known to occur in Powys are also listed as Species of Conservation Concern on the Powys LBAP.

If reptiles are discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and/or the Council's Ecologist.

Otters – Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

Otters are known to be present on the majority of watercourses in Powys. The otter is fully protected under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2017.

It is therefore an offence to:

- Deliberately capture, injure or kill an otter;
- Deliberately disturb an otter in such a way as to be likely to significantly affect the local distribution or abundance of otters or the ability of any significant group of otters to survive, breed, rear or nurture their young;
- Damage or destroy an otter holt;
- Intentionally or recklessly disturb any otter whilst it is occupying a holt; or
- Intentionally or recklessly obstruct access to a holt.

Reasonable avoidance measures need to be implemented to ensure minimal impact to otter activity in the local area. These will include:

- No night working or lighting of the works area;
- Ensuring that no barriers to movement of otters along the river are created;
- Keep unnecessary noise to a minimum during the works; and
- Do not light any fires close to areas of vegetation.

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017

It is an offence for any person to:

- Intentionally kill, injure or take any bats.
- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2017 that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0345 1300 228 or email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk)

#### Water Vole – Wildlife & Countryside Act 1981 (as amended)

The water vole is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 and is a priority conservation species.

It is therefore an offence for any person to:

- intentionally capture, kill or injure water voles
- damage, destroy or block access to their places of shelter or protection (on purpose or by not taking enough care)
- disturb them in a place of shelter or protection (on purpose or by not taking enough care)
- possess, sell, control or transport live or dead water voles or parts of them (not water voles bred in captivity)
- 

If presence of water vole is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. The maximum penalty that can be imposed - in respect of each offence - is an unlimited fine and up to six months imprisonment or both.

#### Badger – Protection of Badgers Act 1992

Badgers and their setts (tunnels and chambers where they live) are protected by law. It is therefore an offence for any person to:

- intentionally capture, kill or injure a badger
- damage, destroy or block access to their setts
- disturb badgers in setts
- treat a badger cruelly
- deliberately send or intentionally allow a dog into a sett
- bait or dig for badgers

If presence of badger sett is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. The maximum penalty that can be imposed - in respect of each offence - is an unlimited fine and up to six months imprisonment or both.

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