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20/06/2023

Dear Sir/Madam,

**PIBLINELL CARBON DEUOCSID HYNET ARFAETHEDIG / PROPOSED HYNET
CARBON DIOXIDE PIPELINE**

RE: NATURAL RESOURCES WALES' WRITTEN SUBMISSION FOR DEADLINE 4

1. Introduction

This document summarises the case put by Natural Resources Wales (NRW) at the Issue Specific Hearings (ISH) on Environmental Matters on 6 June 2023 and addresses the 'action points' requested by the Examining Authority (Action Point ISH1-AP4), namely, to highlight any outstanding technical points in respect of Water Framework Directive (WFD) derogation issues and flood risk management details not addressed at the hearing. It also addresses the comments made by the applicant at Deadline 3 regarding NRW's access to flood risk infrastructure.

These submissions should be considered alongside our previous deadline submissions.

2. Written summary of NRW's oral representation at the ISH1 on Environmental Matters

Item 3 – Biodiversity

NRW confirmed that a licence will be required under the Conservation of Habitats and Species Regulations 2017 in respect of disturbance to European Protected Species arising from the proposed development. NRW's permitting service, as the regulator, may only grant such a licence if the legislative requirements are met, which includes being satisfied that there is a licensable purpose and that the action is not detrimental to maintaining the species at favourable conservation status. NRW understands that the applicant intends to provide 'shadow' or 'draft' licence applications into the examination for NRW to consider. To date these have not been provided and NRW is currently not in a position to advise further.

NRW confirmed in respect of the Barn Owl surveys, that the advice provided in its previous submissions for survey distances to extend to 100 metres and accordingly beyond the Order limits, is based on academic guidance, namely *Goodship, N.M. and Furness, R.W. 2022 (MacArthur Green). Disturbance Distance Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.*

Item 5 - Water Environment/ Water Framework Directive (WFD)/ Flood Risk/ Decommissioning

a) Water Framework Directive

NRW elaborated on the concerns set out in its written representations (REP1-071, para 1.1/p5 for a summary of the concerns, and para 8 for the detailed substantive comments) regarding the implications of the proposed development for compliance with the Water Environment ('Water Framework Directive') (England and Wales) Regulations 2017 (the Regulations), which transposes the Water Framework Directive ('WFD') in Wales. NRW's advice is that as a result of the applicant's proposals to lay pipelines that will cross the Alltami Brook watercourse, which involves excavation of the bedrock, there may consequently be deterioration in the status of the Wepre Brook waterbody. The applicant has adopted, and despite the advice from NRW, is maintaining a position that there is no risk of deterioration in this regard. NRW's advice is that insufficient information has been presented by the applicant to demonstrate that deterioration can be ruled out. Accordingly, NRW's advice is that the ExA should not be recommending giving consent unless the applicant can satisfy the derogation requirements of Regulation 19 of the Regulations, which transpose Article 4(7) of the WFD. The applicant therefore should provide an updated WFD compliance assessment either providing evidence that satisfies NRW that deterioration can be ruled out, or alternatively to present its case on the derogation.

NRW's lead specialist hydrogeologist, Stefan Le Roy, provided an explanation of the hydrogeological concerns in respect of the excavation and disruption of bedrock within Alltami Brook which is immediately underlain by fractured bedrock (the Gwespys Sandstone) wherein the groundwater flows are complex. The fractured bedrock can act as preferential pathways for the transmission of groundwater. The nature of the groundwater-surface water interaction at the Alltami Brook crossing point is currently unknown as is the wider groundwater regime. There is no site-specific ground investigation data currently available to characterise the local geology, hydrogeology, the nature of the interaction with Alltami Brook and the hydrodynamic relationship, if any, between the Brook and anthropogenic features such as the infilled made ground known to be present in the land abutting the southern bank of the brook, local legacy mine workings and weak ground characterised by observed landslips. There is a potential for water flow loss from the Alltami Brook in and around the installed pipeline to ground. Any flow loss could have consequences for the viability of the brook. The local geology to the South has been altered by excavation and mine workings. The works required to install the pipeline at the crossing point will require the southern slope to be reworked/excavated as currently this ground does not visually appear to be sufficiently load bearing for the heavy plant required for the excavation and pipeline installation works. This is an added complication to the proposed engineering works.

NRW's WFD specialist, Helen Millband, explained that reduced flow in a watercourse can affect freshwater wildlife and water quality in a variety of detrimental ways and that physical interventions can change the shape and structure of the watercourse so that there is reduced habitat available for certain taxa like fish, invertebrates, or aquatic plants. Consequently, there may be reductions in dissolved oxygen in the water resulting in pollutants and nutrients becoming more concentrated in the absence of additional water potentially leading to adverse impacts on aquatic wildlife.

b) Access to flood risk management infrastructure

A request was made by email to the Planning Inspectorate dated 5 June for this matter to be the subject of discussion at the ISH on 6 June, however this was not brought to the panels' attention prior to the hearing and the Examining Authority indicated that the concerns could be further addressed by written submissions.

As highlighted in NRW's written representations (see Section 3, paragraphs 3.3 to 3.4) and deadline 2 submissions, there are a number of proposed temporary construction compounds within close vicinity of flood risk assets and main rivers. NRW requires unimpeded access to such flood risk management infrastructure. These concerns relate primarily to the construction phase, specifically the risk of physical impediment resulting from the temporary construction compounds.

In its Deadline 3 submission, the applicant acknowledges that fencing required for the construction compound may comprise a physical impediment. The Applicant is seeking to address NRW's concerns by including Protective Provisions within the DCO which the applicant explains is intended to be of assistance to NRW. In summary, the protective provisions seek to provide access to NRW 'on reasonable request' and to consult NRW during the development of detailed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets. The Applicant submits that this is 'entirely appropriate' in the context of a working site which will include large excavations. The applicant refers to NRW's powers of access under s173 and Schedule 20 of the Water Resources Act 1991, under which access can ordinarily be ensured with 7 days' notice.

NRW disagrees with the approach taken by the applicant. NRW's concern is not whether it has the powers to access the flood risk infrastructure. Notwithstanding the fact that NRW would not need to provide notice under s169, s173 and Schedule 20 of the Water Resources Act 1991 for works carried out in an emergency, it may also generally rely upon its distinct powers under Art. 9 of the Natural Resources Body for Wales (Establishment) Order 2012 to carry out such engineering or building operations as it considers appropriate, without prior notice. Therefore, NRW considers it necessary to ensure that there will be no physical impediment to accessing the flood risk infrastructure as a matter of design.

The River Dee channel between Chester Weir and the estuary mouth is canalised with substantial earth embankment defences on both sides which reduce the risk of tidal flooding to a vast number of residential and commercial properties. A number of communities benefit from the presence of these defences. The Northern Embankment

reduces the risk of flooding to communities including Garden City and Sealand, and the Hawarden Embankment reduces the risk of flooding to communities including Sandycroft, Pentre and Queensferry. Given the number of properties benefitting from the presence of the embankments, they are considered to be two of the key flood risk assets in North Wales. It is therefore imperative that NRW has unimpeded access to these embankments during the construction phase and otherwise.

In summary, NRW cannot agree to deference being given to the applicant in the design stage of the proposed development. The applicant's assertion that NRW is being "overly controlling" in this regard fails to understand the importance of NRW's statutory functions and the flood risk implications presented as result of the development proposals. Accordingly, NRW's approval must be obtained for the design of the construction compounds where there is any risk of any physical impediment to access. A commitment by the applicant merely to consult with NRW is not adequate and unacceptable. NRW considers that such approval may be secured either by way of distinct requirement in the draft DCO or by inclusion of a provision to this effect in the CEMP, making clear, that construction of the compounds may not take place unless and until NRW has given approval. NRW submits that this is a proportionate and necessary approach.

3. Update on progress on the Statement of Common Ground and the Options Appraisal report

NRW has not been contacted by the applicant to progress the SoCG since 23 May 2023.

NRW has been provided with the Options Appraisal report [REP3-039] submitted by the Applicant at DL3 and will provide comment on this, and if appropriate identify any issues agreed and not agreed when consulted by the applicant in respect of the SoCG.

Please do not hesitate to contact Chris Jones [REDACTED] ([\[REDACTED\]@cyfoethnaturiolcymru.gov.uk](mailto:[REDACTED]@cyfoethnaturiolcymru.gov.uk)) should you require further advice or information regarding these representations.

Yours sincerely,

Chris Jones
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