

INTERNAL MEMORANDUM

To:	Adam Foote
From:	Matt Davies (Ecologist)
Ext:	5278
Memo number:	3 Final
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SUBJECT: P/23/0065 | Outline application for erection of a mixed leisure development comprising Indoor Snow Centre (up to 39,200 sq m), Water park (up to 7,500 sq m), Indoor Activity Centre (up to 9,000 sq m), Outdoor Activity Centre, Hotel Accommodation (up to 418 bedrooms), Woodland Lodge accommodation (up to 30 units), car parking (up to 830 spaces) and associated earthworks, access, drainage, servicing and utilities connections/infrastructure | Land To The South West Of The A470/A4102 Roundabout At Rhydycar West Merthyr Tydfil

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SUMMARY

This report represents an assessment of a range of ecological documents in relation to planning application P/23/0065.

Fundamental to the determination of this application is the question of whether the development is “wholly exceptional”. This is not an ecological consideration and so is not explored in any detail in this document.

Should the bar for “wholly exceptional” circumstances not be reached, the application is likely to be refused as part of the application site is found within the Cwm Glo a Glyndyrys Site of Special Scientific Interest (SSSI). Planning Policy Wales 12 precludes such development within a SSSI that is not wholly exceptional in nature.

Notwithstanding the above, the proposed scheme is assessed against current wildlife legislation in force in the UK along with local and national planning policy as they relate to protected habitats and species.

Most of the comments in this document relate to previously requested up-to-date ecological data and information. A significant amount of this has not been provided and, whilst some extra documents have been submitted, the level of detail remains insufficient to allow a meaningful overall assessment of the impacts on protected habitats and species.

A net benefit for biodiversity (NBB) and ecosystem resilience (using DECCA) has not been demonstrated.

Based on this, the development scheme cannot be supported and must be refused.

DOCUMENTS SUBMITTED

1. Rhydyrcar West. Environmental Statement. Volume 1: Main Text. March 2023.
 - a) Chapter 8: Ecology (plus Appendices 8.1 – 8.14)
 - b) Chapter 16: Lighting (plus Appendix 16.1)

Documents submitted subsequently to the above:

2. Rhydyrcar West. Environmental Statement *Addendum*. Volume 1: Main Text. *April 2024*.
 - a) Chapter 8: Ecology (plus Appendices 8.1 – 8.14 and relevant drawings/figures)
3. European Protected Species Conservation Strategy
4. Heads of Terms for Nature Conservation Management Plan
5. Green Infrastructure Statement

1 a) GENERAL COMMENTS REGARDING ES CHAPTER 8: ECOLOGY (PLUS APPENDICES 8.1 – 8.14) MARCH 2023

Age of ecological survey work

Appendix	Survey type	Date of most recent survey	Approximate age of most recent survey (up to 28/06/2024)
1a + 2a	Grassland Fungi	26 th November 2020 (Sturgess)	3 years, 7 months
3a	Phase II (Plant Community) NVC	Between 1994 and 2005 (Bosanquet & Stevens)	c.19 years (based on a survey date of 01/06/2005)
4a + 5a	Marsh Fritillary Butterfly	15 th September 2020	3 years, 9 months
6a, 7a + 8a	Invertebrates	19 th May 2021	3 years, 1 month
9a	Birds		
	o Breeding Bird	16 th June 2021	3 years
	o Wintering Bird	02 nd March 2021	3 years, 3 months
	o Willow Tit	12 th March 2021	3 years, 3 months
10a	Great Crested Newt	07 th June 2021	3 years
11a	Bats		
	o Transect	27 th September 2021	2 years, 8 months
	o Automated	01 st October 2021	2 years, 8 months
	o Autumn Swarming	30 th September 2015	8 years, 8 months
	o Emergence/Re-entry	16 th September 2016	7 years, 9 months
	o Built Structure Inspection		
	o Low suitability (Winter roosting)	24 th February 2016	8 years, 4 months
	o Low suitability (Autumn roosting)	15 th September 2016	7 years, 9 months
	o >Low suitability	12 th March 2021	3 years, 3 months
	o Preliminary Ground Level Roost Assessments	May 2021	3 years, 1 month
12a	Reptiles	29 th September 2021	2 years, 8 months
13a	Mammals (exc Bats)		
	o Dormice	10 th December 2021	2 years, 6 months
	o Badger	April 2021	3 years, 2 months
	o Water Vole and Otter	09 th September 2021	2 years, 9 months
14a	PRF Inspection (Winter)		
	Campaign 1 trees	11 th November 2022	1 year, 7 months
	Campaign 2 trees	16 th November 2022	1 year, 7 months
15a	Stage II bat assessment surveys	3 rd October 2023	8 months

For data and reports more than 3 years old¹ (highlighted in red in the table above) the report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

For data 18 months to 3 years old¹ (highlighted in amber in the table above), a professional ecologist will need to undertake a site visit and may also need to update desk study information and then review the validity of the report. The ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:

- The validity of the report;
- If surveys need to be updated; and
- The appropriate scope, timing and methods for the update surveys

Data less than 12 months (highlighted in green in the table above) is likely to be valid in most cases.

Chapter 8, Table 8.1

Is the up-to-date information about onsite habitats available? Table 8.1 refers to the survey by Bosanquet & Stevens in 2005 (included in the Appendices), but also to site-wide surveys by Bioscan since 2015, most recently in 2021 with targeted additional work in 2022, however the details have not been provided to date.

Avoidance, Mitigation, Compensation and Enhancement

Planning Policy Wales Edition 12 states that *“Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems. A net benefit for biodiversity is the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site. The step-wise approach outlined below is the means of demonstrating the steps which have been taken towards securing a net benefit for biodiversity. In doing so, planning authorities must also take account of and promote the resilience of ecosystems, [using] the DECCA Framework.”*

Having worked iteratively, through the stages of the step-wise approach (1. Avoid, 2. Minimise, 3. Mitigate/Restore, 4. Compensate) and providing evidence in the Green Infrastructure Statement that the step-wise approach has been followed, a scheme of enhancements must be provided to ensure a net benefit for biodiversity.

Chapter 8 states that *‘Both the location of the development within the wider landholding and the detailed positioning and extent of the Application Site have been configured through numerous design iterations in order that overlap with the designated Cwm Glo a Glyndrys SSSI is restricted to the absolute minimum necessary.’*

It could be argued that these design iterations represent avoidance and minimisation of some of the adverse environmental effects of the proposed development on the SSSI. However, a similar statement is not made

¹ Advice Note. On the Lifespan of Ecological Reports & Surveys. CIEEM. April 2019.

within Chapter 8 in relation to the *Rhydygar West* and *Cwm Glo* SINC, which make up most of the proposed development site.

Mitigation and compensation measures have been referred to in a broad sense (for example, species protection plans, improved management of the wider site, offsite compensation etc). NB whilst further information has been provided in the form of a *European Protected Species Conservation Strategy* (Document 3), a *Heads of Terms for Nature Conservation Management Plan* (Document 4) and a *Green Infrastructure Statement* (Document 5), the information contained within these documents is still relatively broad in nature. The detail is insufficient. See further comments regarding Documents 3, 4 and 5 in the sections below.

Without full and detailed information regarding mitigation, compensation and enhancement measures, the ultimate outcomes regarding protected habitats and species are unknown.

The extensive survey work undertaken at the site (albeit technically out of date) has shown it to be rich in biodiversity and important for protected habitats and species with a range of levels of importance (district, national, international).

The damage to/destruction and disturbance of the SINC and SSSI sites (because of the proposed development) from an ecological perspective is unacceptable. Particularly with the lack of provision of *adequately detailed* mitigation, compensation or enhancement measures to date.

The information provided of the principle of offsite compensation measures through better management of the wider site does not provide any confidence of its effectiveness given the current state of the onsite habitats (i.e., reduced in extent and quality due to management decisions made by landowners/applicants/tenants). NB see x2 excerpts (paras 8.4.4 and 8.6.1) from Document 1a below:

Para 8.4.4

*The focus of grassland fungal interest remains outside the Application Site and elsewhere within the SSSI (especially in the north of the landholding). The results of specialist mycological surveys carried out across the landholding in autumn 2015 (Appendix 8.1) and autumn 2020 (Appendix 8.2) indicate that these areas retain a high value for grassland fungi, consistent with the position reported in 2007 (Evans and Mitchell 2007), albeit abundance in 2020 was somewhat reduced in some areas, in part due to the vagaries of seasonal and other conditions and in part **due to a relaxation of grazing management** in some areas.*

Para 8.6.1

*One consequence of this is that key open grassland habitats in the north-western part of the SSSI (outside the Application Site) have been reduced in extent and quality **as a consequence of management neglect. Indeed, the open fen-meadow grasslands in this area are amongst the most threatened on the SSSI due variously to lack of grazing and scrub encroachment, or (in contrast) localised overgrazing.***

The Natural Resources Wales (NRW) management statement for Cwm Glo a Glyndyrys SSSI (https://naturalresources.wales/media/665328/SSSI_1597_SMS_EN00192de.pdf) details the reasons the site is special and how it should be managed. This includes for instance a statement regarding grazing.

‘Grazing is very important. It allows lots of different plants to grow together, and prevents one or two species of plant from taking over the grassland, or even the grassland turning into scrub and woodland. Light grazing, preferably by cattle alone, or by a combination of horses and cattle, is the best to maintain both types of

grassland. If possible, grazing should mostly be limited to between about May and September. The aim of the grazing will be to produce a sward that is about 5 – 20cm (2 – 10 inches) high at the end of the summer.'

This is an example of how the SSSI is already meant to be managed.

Information within the EclA suggests that these management practices have been relaxed in recent years. Reinstatement of management practices (for instance, such as conservation grazing) has been offered as part of the compensation package for the loss of habitat due to the development.

Whilst this reinstatement of management practices in the wider site is welcomed, it could be argued that this should happen even if the development did not take place. So, it is difficult to see the argument that this truly represents compensation for the habitat to be lost. Proper management of the SSSI should be enforced by NRW and areas *over and above this* should be offered for compensation purposes.

Generally speaking, regarding the loss of habitat in the SINCs and the SSSI, the information and measures as stated in Box 1 below (most of which has been previously requested) has not been provided.

Box 1

Quantification of the total area to be impacted must be stated with an equivalent area of effective compensation demonstrated as part of the information that should be provided in line with the DECCA Framework (*Extent*). Subsequent monitoring to assess the success or otherwise of the mitigation, compensation and enhancement measures undertaken must be included. A management and maintenance plan for compensation areas will be required (in perpetuity). Also, details of who will fund the management and maintenance and who will be ultimately responsible for implementation. Suggestion: it might be useful to perhaps use a version of the Biodiversity Net Gain (BNG) system (as used in England) to aid the process. This is not essential, however. Following receipt of this information, a full assessment can be made of the extent of the adverse impact on the environment at this site. If this clearly outweighs the other material considerations then the development should be refused.

SPECIFIC COMMENTS REGARDING CHAPTER 8: ECOLOGY (PLUS APPENDICES 8.1 – 8.14)

Figure 8.2

Where are the representations of 'wet woodland' and 'upland oakwood'? Do these occur within the application site? This information has previously been requested, but has not been supplied to date.

Para 8.4.4

'The principal interest features underpinning the SSSI designation have thus been largely avoided by virtue of the design process.'

NB The above statement is not necessarily correct as it is *the association of* the grassland habitats in the SSSI with woodland and heath habitat that is also important for its designation, as stated in the SSSI citation document:

'Cwm Glo a Glyndyrys is of special interest for its extensive areas of marshy grassland, species-rich neutral grassland and acid grassland, 'and' for the association of these habitats with others including woodland and heath. It is also of special interest for its outstandingly diverse assemblage of grassland fungi, including 32 species of waxcap Hygrocybe spp, making it one of the best sites in Britain.'

[Policy EnW22: Internationally and Nationally Protected Sites and Species]

'Development likely to have an adverse effect either directly or indirectly on the conservation value of an internationally or nationally designated site, including the area, structure and function of designated features, will only be permitted where it is demonstrated that:

- 1. There is no suitable alternative to the proposed development;*
- 2. It can be demonstrated that the benefits from the development clearly outweigh the special interest of the site; and*
- 3. Appropriate compensatory measures are secured; or*
- 4. The proposal contributes to the protection, enhancement and positive management of the site.*

Development proposals likely to affect protected species will only be permitted where it is demonstrated that:

- 1. The population size, range, distribution and long-term prospects of the species will not be significantly adversely impacted;*
- 2. There is no suitable alternative to the proposed development;*
- 3. The benefits of the development clearly outweigh the adverse impacts on the protected species; and*
- 4. Appropriate, avoidance, minimisation, mitigation, compensation and enhancement measures are provided.'*

Adherence to the above criteria has not been demonstrated.

Para 8.6.1

'While the statutory authority NRW has powers at its disposal to enforce suitable management in extremis, these are rarely used.'

Given the admission within Chapter 8 that key open grassland habitats have been reduced in extent and quality due to management decisions made by the landowners/tenants – this might represent a rare occurrence where NRW could and perhaps should be utilizing its powers to enforce suitable management, regardless of whether or not there is a live planning application.

In addition, as Document 1a has outlined the changes in the management to the detriment of the SSSI (with no effective enforcement from NRW), there is no real guarantee or safeguard and no real confidence that the wider landholding (representing both SSSI and non-SSSI resources) or offsite compensation areas will be managed appropriately post-development or that any mismanagement will be corrected.

Para 8.5.16

*'By far the larger impact will be on the Rhydycar West SINC, with perhaps **25%** of the total designated area being lost to the development. By contrast, the impact on the Cwm Glo SINC would be slight, with perhaps 0.2ha of the total 127.1ha site being lost (0.16%). Considered cumulatively these losses would be of **moderate to major magnitude and a significant adverse effect at all scales up to Regional/County level, commensurate with the geographical frame of reference at which such sites are valued.**'*

² See Merthyr Tydfil County Borough Council Replacement Local Development Plan (2016 - 2031) - <https://www.merthyr.gov.uk/media/5642/replacement-ldp-written-statement-final-composite-version-140120.pdf>

[Policy EnW3³: Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves and Priority Habitats and Species]

'Development proposals likely to have an adverse impact on Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, or Priority Habitats and Species will only be permitted where it can be demonstrated that:

- 1. The need for the development clearly outweighs the conservation value of the site;*
- 2. Adverse impacts on nature conservation features or geological features can be avoided;*
- 3. Appropriate and proportionate mitigation and compensation measures can be provided; and*
- 4. The development maintains and where possible enhances biodiversity and geodiversity interests.'*

Adherence to the above criteria has not been demonstrated.

Para 8.1.10

'The precise magnitude of such offset, and whether it delivers an outcome approaching or exceeding neutral in terms of overall net change, is contingent on the precise details of the off-site measures that will be submitted in support of the application in due course.'

Section 6 of the Environment (Wales) Act 2016 calls for maintenance and enhancement of biodiversity. The above text along with the most recently submitted information (Documents 1, 2 and 3) does not provide sufficient detail terms of the proposed off-site measures. Without this detail, as previously stated, the application cannot be supported. To ensure a net benefit for biodiversity, net outcomes must be positive, therefore *'... an outcome approaching or exceeding neutral in terms of overall net change'* is insufficient.

Para 8.6.5

*'Once settled, the detail of the on and off-site compensation package will be fed into the application process as appropriate, for example as **Further Environmental Information**, along with quantitative measures of the balance of loss versus gain in terms of biodiversity.'*

As previously stated, the information within Documents 3, 4 and 5 is insufficient.

Para 8.6.6

'The detail of these various wider landholding and off-site measures will be secured by a Compensation and Habitat Management Plan (or similar appropriate vehicle) secured via a pre-commencement condition on the planning consent.'

The Compensation and Habitat Management Plan (or similar appropriate vehicle) was previously requested for consideration *prior to determination* of the planning application. This has not been provided.

Para 8.6.6

'These measures will be fully detailed via a Construction-phase Environment Management Plan (or similar) secured via a pre-commencement condition on the planning consent.'

³ See Merthyr Tydfil County Borough Council Replacement Local Development Plan (2016 - 2031) - <https://www.merthyr.gov.uk/media/5642/replacement-ldp-written-statement-final-composite-version-140120.pdf>

The Construction-phase Environment Management Plan is *ideally* required for consideration *prior to determination* of any planning application. Otherwise, this could be secured via an appropriately worded pre-commencement planning condition.

COMMENTS REGARDING APPENDICES 8.1 – 8.14

Appendices 1a & 2a (Grassland Fungi Surveys 2015 & 2020)

Latest survey data from 26 November 2020, so approx. 3 years and 7 months old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The 2015 document states that *“The 2015 grassland fungi survey has confirmed that the site still supports an internationally important assemblage of grassland fungi. Although the study was largely focussed on waxcap species within the grassland habitats, the numbers of these easily exceed the SSSI selection criteria, which requires the presence of 18 or more waxcap species.”*

The 2020 document states that *“A total of 26 waxcap species was observed. This would count as 27 if *Hygrocybe pratensis* var *pallida* is counted as a distinct taxon, as it is in the SSSI criteria that relate to waxcaps. This easily exceeds the revised SSSI threshold of 19 species. However, the total is less than has been recorded in previous years (32 species in both 2007 and 2015).”*

The 2020 document reports a decline in numbers of waxcap species observed for the whole SSSI site (in terms of fruiting bodies) and concludes that the likely cause is the reduction in grazing at Cwm Glo. The document recommends a series of management solutions to address the waxcap decline, including a range of grazing measures as well as scrub control measures. Monitoring of the site to assess the response to the recommended management is required.

The document also suggests research using soil DNA to investigate the longevity of waxcap mycelium in areas no longer suitable for fungi fruiting. This should be used where appropriate.

Looking specifically at Area 19 (NB this area is outside of the SSSI, but within the Rhydycar West SINCC) – in 2015, 13 species of waxcap were recorded and in 2020 there were 18 species recorded. This total would have met the selection criteria threshold for SSSIs from 2009⁴ and is just one short of the revised selection criteria threshold for SSSIs from 2018⁵. An analysis of soil DNA could reveal this area meets and exceeds the threshold for SSSI standard.

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

Along with an update to the survey data and report, an amended document must be supplied that includes a full discussion of the direct impacts of the development on these waxcap assemblages and provides detailed mitigation, compensation (translocation where possible) and enhancement measures. Grassland Fungi is a specialist field, so it will be useful for the ecologist that undertook the baseline surveys to discuss the results in the context of the latest development plans and offer their suggestions for mitigation, compensation and enhancement measures. NB although touched upon within the EclA report, more detail is required – to

⁴ Genney D. R., Hale A.D., R.G. Woods. & Wright M. (2009). Guidelines for selection of biological SSSIs: Rationale Operational approach and criteria. Detailed guidelines for habitats and species groups . Chapter 20 Grassland fungi. Joint Nature Conservation Committee.

⁵ Bosanquet, S.D.S., Ainsworth, A.M., Cooch, S.P., Genney, D.R, and Wilkins, T.C. (2018). Guidelines for the Selection of Biological SSSIs. Part 2: Detailed Guidelines for Habitats and Species Groups. Chapter 14 Non lichenised Fungi. Joint Nature Conservation Committee, Peterborough.

include, for example, a plan overlaying the redline boundary of the development onto the waxcap distribution figure. This will help to visualise the impacts.

The requirements from Box 1 were also previously requested here but have not been provided.

Appendix 3a (Vegetation Survey 2005)

This report from 2005 and the data within it is substantially out of date (19 years).

The EclA report refers to site-wide surveys by Bioscan since 2015, most recently in 2021 with targeted additional work in 2022, however the details are not provided.

The results of the most recent 2021 survey, with detailed interpretation within the context of the current planning application and the likely impacts on the habitat, has previously been requested, but not provided. Other information requested, but not provided included the following - *The document must also provide detailed mitigation, compensation (translocation where possible) and enhancement measures. For example, a plan overlaying the redline boundary of the development onto a habitat plan would help to visualise the impacts.*

The requirements from Box 1 were also previously requested here but have not been provided.

Appendices 4a & 5a (Marsh Fritillary Larval Web Surveys 2015 & 2020)

Latest survey data from 15 September 2020, so approx. 3 Years and 9 months old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

Along with an update to the survey data and report, an amended document must be supplied that includes a full discussion of the impacts of the development on the marsh fritillary butterfly (as set out in comments supplied by NRW) and provides detailed mitigation, compensation and enhancement measures. It will be useful for the ecologist that undertook the baseline surveys to discuss the results in the context of the latest development plans within their report and offer their suggestions for mitigation, compensation and enhancement measures. A plan overlaying the redline boundary of the development onto a figure with the distribution of both devil's bit scabious and marsh fritillary butterfly would help to visualise the impacts.

The requirements from Box 1 were also previously requested here but have not been provided.

NB see comments from NRW (dated 12th July 2024⁶) regarding marsh fritillary butterfly and the reference to screening through a Habitats Regulations Assessment (HRA). NRW propose the HRA requirement to be secured via a planning condition. However, an HRA is triggered at the planning application stage and must be passed before planning permission is granted and so a planning condition may not be appropriate.

Appendices 6a, 7a & 8a (Invertebrate Surveys 2015, 2018, 2021)

The reports conclude that the survey area is of *County Significance* for Invertebrates.

⁶ NB NRW's comments relate only to European Protected Species and to the SSSI.

Latest survey data is from 19 May 2021, so approx. 3 years and 1 month old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

Along with an update to the survey data and report, an amended document must be supplied that includes a full discussion of the direct impacts of the development on invertebrates and provides specific detailed mitigation, compensation and enhancement measures. The specific parts of the site to be impacted directly should be part of the focus. A plan overlaying the redline boundary of the development onto the map would help to visualise which specific areas would be impacted. Invertebrates are a specialist field, so it will be useful for the ecologist that undertook the latest baseline surveys to discuss the results in the context of the latest development plans and offer their suggestions for mitigation, compensation and enhancement measures. NB although touched upon within the EclA report, more detail is required.

The requirements from Box 1 were also previously requested here but have not been provided.

Appendix 9a (Bird Surveys 2015-2021)

Latest survey data for Breeding Birds, Wintering Birds and Willow Tit is all more than 3 years old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

Any updated survey work should follow the Bird Survey Guidelines methodology (<https://birdsurveyguidelines.org/>) designed to be used for Ecological Impact Assessments rather than to monitor long-term trends in bird populations at a national level.

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

An amended document must be supplied that includes a full discussion of the impacts of the development on birds and provides specific detailed mitigation, compensation and enhancement measures. NB although touched upon within the EclA report, more detail is required. A plan overlaying the redline boundary of the development onto a figure with the distribution suitable breeding bird habitat would help to visualise the impacts.

The requirements from Box 1 were also previously requested here but have not been provided.

Appendix 10a (Great Crested Newt Surveys 2015-2021)

Latest survey data from 07 June 2021, so approx. 3 years old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

An amended document must be supplied that includes a full discussion of the impacts of the development on great crested newt and provides specific detailed mitigation, compensation and enhancement measures. NB although touched upon within the EclA report, more detail is required.

The requirements from Box 1 were also previously requested here but have not been provided.

NB see also comments from NRW (dated 12th July 2024) regarding great crested newt.

Appendix 11a (Bat Surveys 2015-2021)

Latest transect and automated survey is all more than 18 months old. As previously stated, for data that is 18 months to 3 years old, a professional ecologist will need to undertake a site visit and may also need to update desk study information and then review the validity of the report. The ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:

- The validity of the report;
- If surveys need to be updated; and
- The appropriate scope, timing and methods for the update surveys

The Autumn swarming, surveys are more than 8 years old. For data that is more than 3 years old, the report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

An amended document must be supplied that includes a full discussion of the impacts of the development on bats and provides specific detailed mitigation, compensation and enhancement measures. NB although touched upon within the EclA report, more detail is required. A plan overlaying the redline boundary of the development onto a figure with the distribution suitable bats roosts and activity would help to visualise the impacts.

The requirements from Box 1 were also previously requested here but have not been provided.

Bat Surveys

Submitted document:

- **Cwm Glo a Glyndyrys, Merthyr Tydfil. Species Survey Report: Bats. Report No. E1835-BAT-R1. February 2022. Bioscan (UK) Ltd.**

NB the comments below assess the survey work against the Good Practice Guidelines in date at the time (Collins 2016).

The site has high suitability for foraging and commuting bats (BCT Bat Surveys for Professional Ecologists. Good Practice Guidelines, Collins 2016). See Box 2 below for specific guidance provided regarding the number of bat activity surveys recommended to achieve a reasonable survey effort in relation to high habitat suitability:

Box 2

Transect/spot count/timed search surveys: Up to two survey visits per month (April to October) in appropriate weather conditions for bats. At least one of the surveys should comprise dusk and pre-dawn (or dusk to dawn) within one 24-hour period.

AND

Automated/static bat detector surveys: Three locations per transect, data to be collected on five consecutive nights per month (April to October) in appropriate weather conditions for bats.

Bat Transect Surveys 2015-2018

2015 – four transects walked in May (x1 visit), June (x1 visit) and July (x1 visit). NB only Transect 4 was within the redline boundary for the application.

2016 – two transects walked in August (x2 visits), September (x2 visits). NB only Transect 2 was within the redline boundary for the application.

2018 – two transects walked in April (x1 visit), May (x1 visit), June (x2 visits), July (x2 visits), August (x3 visits), September (x2 visits). NB only Transect 2 within the redline boundary for the application.

Survey guidelines in terms of transect surveys not adhered to and all above surveys are out-of-date.

2015-2018 surveys – species identified – common pipistrelle, soprano pipistrelle, *Myotis sp*, Barbastelle, Whiskered/Alcathoe/Brandt's bat, Nathusius' pipistrelle, noctule, brown long-eared bat,

Notable bat species recorded Barbastelle, Nathusius' pipistrelle.

Bat Transect Surveys 2021

2021 – two transects walked in April (x2 visits), May (x2 visits), June (x2 visits), July (x2 visits), August (x2 visits), September (x2 visits). NB both transects within the redline boundary for the application.

2021 surveys – species identified – common pipistrelle, soprano pipistrelle, Daubenton's bat, *Myotis sp*, Whiskered/Alcathoe/Brandt's bat, Nathusius' pipistrelle, noctule, brown long-eared bat, lesser horseshoe bat, serotine

Notable bat species recorded lesser horseshoe bat and Nathusius' pipistrelle.

Automated Bat Surveys, 2015-2021 (page 11-15)

Species – common pip, soprano pip, Nathusius' pip, noctule, serotine, barbastelle, brown long-eared bat, greater horseshoe bat, Natterer's bat, *Myotis sp*, WAB, Daubenton's bat, lesser horseshoe bat.

Notable bat species recorded: Nathusius' pipistrelle, barbastelle, lesser horseshoe bat, greater horseshoe bat.

The results of the Transect Surveys and the Automated Bat Surveys must inform any proposed lighting onsite, which must be appropriate to allow light sensitive species to through and around the proposed development site.

Built structures

Autumn swarming surveys, 2015

Lesser horseshoe bat roost noted in structure B12 (September 2015).

Species detected – common pip, soprano pip, Nathusius’ pip, noctule, Long-eared, *Myotis sp*, Daubenton’s bat, Greater horseshoe, lesser horseshoe, WAB, Natterer’s bat. Also, social calls detected.

Emergence / re-entry surveys, 2016

Species detected – sop pip, common pip, probable Daubenton’s bat.

Built Structure Inspections

2016 (Winter and Autumn roosting)

2021 (re-inspected for evidence of hibernating bats only)

1, 2 and 3 above are either out-of-date and/or don’t follow the BCT Bat Surveys for Professional Ecologists. Good Practice Guidelines (Collins 2016). Up-to-date appropriate survey work (depending on the suitability for roosting bats) of the built structures was previously requested.

Trees

Preliminary Ground Level Roost Assessments (PGLRA) undertaken in 2021 ‘*were not comprehensive*’. Only trees within the north-west area (location of in particular the ski slope) were included. Trees outside this area have not been assessed.

All trees to be impacted by the development must be subject to a PGLRA.

All trees found to have moderate or high suitability for roosting bats must be subject to PRF Inspection Surveys, presence or absence surveys or roost characterisation surveys.

NB - within the Tree Survey and Works Schedule (April 2022) there are trees marked ‘fell to implement scheme’ and trees marked to be felled due to poor condition. It is expected as a minimum that all these trees would be subject to the surveys as set out above.

Regarding those trees marked for removal *due to condition* (rather than to implement scheme). These trees must remain in situ if they are outside of the boundary of the scheme and do not pose a danger to the public? If they need to be removed for health and safety reasons, these trees should only be subject to the minimum level of works that would make them safe, for example, dangerous limbs removed with standing deadwood to remain.

Bat detectors & bat data analysis

- Could the spec of the detectors used ‘specific to each year survey work was undertaken’ be included?
- What version of Kaleidoscope was used in the analysis?

This information has not been supplied.

NB see also comments from NRW (dated 12th July 2024) regarding bats.

Appendix 12a (Reptile Surveys 2021)

Latest reptile survey is dated 29th September 2021, so 2 years and 8 months old. As previously stated, for data that is 18 months to 3 years old, a professional ecologist will need to undertake a site visit and may also need to update desk study information and then review the validity of the report. The ecological surveys

may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:

- The validity of the report;
- If surveys need to be updated; and
- The appropriate scope, timing and methods for the update surveys

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

An amended document must be supplied that includes a full discussion of the impacts of the development on reptiles and provides detailed mitigation, compensation and enhancement measures. The total area to be impacted must be quoted and monitoring to assess the success or otherwise of the measures undertaken must be included.

Appendix 13a (Mammals (excluding bats) 2015-2021)

Common dormice

Latest reptile survey is dated 29th September 2021, so 2 years and 8 months old. As previously stated, for data that is 18 months to 3 years old, a professional ecologist will need to undertake a site visit and may also need to update desk study information and then review the validity of the report. The ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:

- The validity of the report;
- If surveys need to be updated; and
- The appropriate scope, timing and methods for the update surveys

1. Dormouse surveys were undertaken in 2015 and 2021. Both surveys deployed tubes from May to December. This would therefore score an acceptable 24 on the index of probability for detecting absence⁷. However, it seems that the tubes were only checked four times during the 2015 season and three times during the 2021 season. Best practice dictates that tubes are checked every month over the survey season as dormouse nests are often destroyed by other small mammals (e.g., woodmice).
2. In the past, NRW have asked for boxes to be deployed rather than tubes in a woodland setting.

NRW have made no comment regarding the methodology of the dormouse surveys as undertaken, however, further comments and reaction from NRW should be sought regarding Points 1 and 2 made above. NB no response from NRW has been made to date regarding this in their comments from 12th July 2024.

The detail and information within the paragraph below (in *italics*) was previously requested and has not been provided.

Given the limitations outlined in points 1 and 2, I would expect the precautionary principle to be followed and a robust method statement for habitat removal to be produced with consideration for the possible presence of dormice onsite. Any habitat suitable for dormice will be compensated for. A plan overlaying the redline

⁷ Bright, P., Morris, P. and Mitchell-Jones, T. (2006) The Dormouse Conservation Handbook, Second Edition. English Nature.

boundary of the development onto a figure with the distribution suitable dormouse habitat would help to visualise the impacts.

The requirements from Box 1 were also previously requested here (as part of the precautionary approach) but have not been provided

Badger

Latest survey data is from April 2021, so approx. 3 years and 2 months old. As previously stated, for data and reports more than 3 years old, the reports are unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist).

The Appendix does not state the course of action to be undertaken if active badger setts are found during site clearance in those areas that were not able to be surveyed (e.g., within the east-facing slopes of the former Glyndyrys Pit tips).

Water vole and Otter

Latest water vole and otter survey is dated 9th September 2021, so 2 years and 9 months old. As previously stated, for data that is 18 months to 3 years old, a professional ecologist will need to undertake a site visit and may also need to update desk study information and then review the validity of the report. The ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:

- The validity of the report;
- If surveys need to be updated; and
- The appropriate scope, timing and methods for the update surveys

Any waterways within the development site that would be impacted by the scheme will be subject to a precautionary otter (and water vole) survey/check prior to any works that may affect local otters and/or water voles immediately prior to works. Any works that could impact waterways will be specified and an appropriate method statement produced with consideration for otters and water voles. The otter (and water vole) check along with the method statement could be secured via an appropriately worded pre-commencement planning condition.

Polecat

Mitigation, compensation and enhancement measures regarding polecat will be required. An appropriate method statement produced with consideration for polecat would be required. The method statement could be secured via an appropriately worded pre-commencement planning condition.

Appendix 14a (Results of a climb and inspect survey of trees at Cwm Glo for their potential to hold roosting bats – Campaign 1 – 14th November 2022 and Campaign 2 – 18th November 2022)

A total of 99 trees underwent 'climb and inspect surveys' between 7th and 16th November 2023 (during the Autumn flux period).

A short letter-style report has been presented in Appendix 14a in conjunction with a slew of unlabelled tables. Some labelling and explanation of the tables would be of assistance. The letter style report outlines, of some 99 trees inspected, only 54 were judged to be superficially suitable to be occupied by bats. Of these 54 trees only one was found to be a roost for an individual Daubenton's bat.

It is unclear whether the 99 trees represent all the trees to be impacted by the proposed development.

Grid references are provided within the many associated tables however a plan has not been submitted showing where these trees are in relation to the proposed development.

This survey work has generated results for the autumn-flux period, but no other (winter, spring-flux, pregnancy, nursery, mating).

The information and results included within the report are insufficient.

Appendix 15a (Stage II bat assessment surveys 2023)

This report is too brief.

Apart from Figure 3, there are no photographs of the structures involved and the images used in the 'ACTIVITY SURVEYS results section' to show surveyor positions are poor – better diagrams showing surveyor and NVA positions are needed. In addition, the report should include plans/diagrams showing general bat activity and flight direction following emergences (where relevant).

There is no detail of the methodology for the emergence surveys, or the specification of the equipment used (bat detectors, NVAs etc).

The surveys were undertaken on the 11th of August 2023, the 13th of September 2023 and the 3rd of October 2023. For the roost characterisation surveys, all the surveys should have been undertaken May to September with at least two of the surveys between May and August. October might be appropriate if the aim was to investigate the presence of transitional roosts – it is unclear if this was the case here.

Full details of the NVA results have not been provided.

The presentation of results is confusing with some discrepancies.

Table 1 as shown in the report. Red highlighting denotes discrepancy with the rest of the report, Orange highlight denotes confusion regarding the presentation of results.

Site and area	Bat roost potential [suitability]	Insp	Activity		
		11/08 or 03/10	11/08	13/09	03/10
B5 wall	Low	Y*	Y		
B6 bridge	Confirmed (2021)	Y	Y	Y	Y
B7 wall	Low	Y	Y		
B8 bridge	Confirmed (2021)	Y* (arch crevices)	Y	Y	Y
B10 chimney base & tunnel	Confirmed (2021)	Y*	Y	Y	Y
B12 wall face	Low	Y*	Y		

B12 wall 4x alcoves	Confirmed (2021)	Y 3x			
B13 wall face	Low	Y*	Y		
B13 wall alcove with chimney	High	Y 3x			
B15 culvert	Moderate	Y*	Y	Y	
B16 low culvert	Moderate	Y*	Y		
B18 wall	Low	Y*	Y		
B19 vegetation covered wall	Negligible	-			
B20 culvert	Moderate	Y*	Y	Y	
B21 low culvert	Moderate	Y*	Y	Y	

*Not possible to fully inspect every potential roosting feature so activity survey(s) conducted

Pages 7-9 | 5. RESULTS, INSPECTION SURVEYS

No information for B16, B18 or B19 (NB even though B19 had negligible suitability it must have had an inspection survey).

Table 1 indicates 3x inspection surveys for 'B12 wall 4x alcoves', but the INSPECTION SURVEYS results for B12 (pages 8 and 9) don't make it clear that 3x inspection surveys were undertaken or present the results for each inspection visit?

Does 'B13 Kiln with flue' refer to 'B13 wall alcove with chimney' in Table 1? If so, there is no INSPECTION SURVEY result for 'B13 wall face'.

Table 1 indicates 3x inspection surveys for 'B13 wall alcove with chimney', but the INSPECTION SURVEYS results for B13 (page 9) don't make it clear that 3x inspection surveys were undertaken or present the results for each inspection visit?

Pages 10-23 | ACTIVITY SURVEYS

11/08

Page 10 – results for B12 & B13 – both for the wall face – unclear which results are for B12 and which for B13. Also, there are references to 'South section' and North Section' - again not clear what these refer to.

No emergence survey results included for B7, B16, B18, B20, B21?

13/09

Page 15, second emergence survey for B12, however Table 1 has no entry for a survey on this date?

No emergence survey result included for B21?

03/10

Page 20, third emergence survey for B12, however Table 1 has no entry for a survey on this date?

Page 21, second emergence survey result for B20, however, Table 1 has no entry for a survey on this date?

Page 23 | CONCLUSIONS, Table 2

Confirmed bat roosts during 2023 surveys –

- 13/09 - B6 (1x *Myotis*);
- 13/09 and 03/10 - B12 (1x LHS); *NB pages 15 and 20 in the ACTIVITY SURVEYS section does not mention LHS? Was this bat seen during the inspection surveys? Not clear.*
- 13/09 - B20 (3x *Myotis*) *NB page 18 in the ACTIVITY SURVEYS section states 2x Myotis?*

There is no interpretation of the results and no conclusions regarding for example the possible impacts of the proposed development on roosting bats or recommendations for, e.g., avoidance, mitigation, compensation or enhancement measures.

The report is not acceptable in its current form.

1 b) COMMENTS REGARDING ES CHAPTER 16: LIGHTING (PLUS APPENDIX 16.1) MARCH 2023

NB the comments regarding Document 1b are presented in *italics*. The questions and requests for further information and clarification within the comments previously made, have not been addressed.

Submitted document:

- Rhydyar West, Merthyr Tydfil, CF48 1RW. Light Spillage Assessment. Issue 3. 4th February 2022. Tetra Tech.

Guidelines

This document must reference and take account of the following BCT/ILP guidance:

<https://theilp.org.uk/publication/guidance-note-8-bats-and-artificial-lighting/>

Proposed dark areas/routes/corridors and any proposed onsite lighting must conform to these guidelines.

Proposed dark areas/routes/corridors

Executive Summary: 'Following the installation of an appropriate lighting scheme as detailed in this report, the risk of the proposed development resulting in significant exceedances of 1 lux along potential bat foraging/commuting routes is considered to be negligible.'

The BCT/ILP guidelines state 'where 'complete darkness' on a feature or buffer is required, it may be appropriate to consider this to be where illuminance is below 0.2 lux on the horizontal plane and below 0.4 lux on the vertical plane. These figures are still lower than what may be expected on a moonlit night and are in line with research findings for the illuminance found at hedgerows used by lesser horseshoe bats, a species well known for its light averse behaviour (Stone, 2012)'

These are the criteria that should be quoted within the document for dark areas/routes/corridors. [NB it is however noted that Table 5.2 of the Light Spillage Assessment Document shows the predicted model illuminance 'at the chosen Ecological Receptors' to be no higher than 0.05lux.]

See below for an overlay of Figures 4.3 (Modelled Ecological Receptors) and 5.1 (Indicative External Lighting Layout)

The highest predicted model illuminance of the chosen Ecological Receptors is shown at E3 (0.05lux), but for example, the predicted model illuminance at E20 and E28 is lower at 0.01lux and 0.02lux respectively. This seems counterintuitive, as E20 and E28 are closer to proposed luminaires than E3? To further illustrate this point, the two Ecological Receptors either side of E3 (E2 and E4) are in similar positions, but both have lower predicted model illuminance (0.01lux and 0.02 lux respectively).

In addition, Table 4.2 shows the baseline lux levels and, for example, location 1 (L1) has an illuminance level of 0.05lux (facing east). L1 is in the same position as E20, but the 'baseline' illuminance level (pre-lighting) is higher than the predicted model illuminance (post-lighting)?

Proposed onsite lighting

All luminaires will conform to the BCT/ILP guidelines (as previously referred to) – see the list of Appropriate luminaire specifications on pages 18 and 19. For example, the luminaires must be LED with a colour temperature of <2700K and peak wavelengths of more than 550nm. Specifications that demonstrate these criteria must be supplied.

Internal lighting

Executive Summary: ‘... staff and guests should be encouraged to have curtains drawn or blinds closed within the hotel bedrooms at night, thus further reducing the effects of internal lighting on the external environment.’

Reliance on human behaviour in regard to drawing curtains or closing blinds in order to reduce internal light spill externally is not adequate.

The BCT/ILP guidelines state: ‘... low transmission glazing treatments may be a suitable option in achieving reduced illuminance targets. Products available include retrofit window films and factory-tinted glazing. ‘Smart glass’, which can be set to automatically obscure on a timer during the hours of darkness, and automatic blinds can also be used but their longevity depends on regular maintenance and successful routine operation by the occupant, and should not be solely relied upon. Depending on the height of the building and windows, and therefore predicted light spill, such glazing treatments may not be required on all storeys. This effect can be more accurately determined by a lighting professional.’

These extra measures will be required.

*And ‘The other internal amenity areas, such as restaurants, will be located at lower levels where light spillage is kept to a minimum. A further detailed lighting assessment within these areas **would** include **an internal lighting design plan**, focusing on avoidance of further light spillage.’*

Is there another document - an internal lighting design plan?

The BCT/ILP guidance includes further options for internal lighting mitigation, e.g., light fittings recessed into ceiling, balconies or other barriers as light interceptors, light fittings set back into room etc).

Have measures such as this been incorporated?

Other possible light sources

NB the completed proposed development when operational would also introduce artificial light in the form of car headlights and possibly the torches of residents walking to and from their woodland accommodation. These impact of these light sources need also to be assessed with avoidance and mitigation measures added into the proposal for consideration.

Lighting operation

2.3.2 Best Practice Design, page 10: ‘Where possible, lighting will be controlled via Central Management System (CMS) time and light level sensors with controls capable of being adjusted and remotely set to adapt to local needs as required.’

When will the lights be operational? Full details of how the CMS is proposed to operate are needed.

Other (plans)

Horizontal and vertical illuminance plans are required showing light levels in relation to new and retained habitats and demonstrating dark routes not only around, but across the site.

The plans must also be shown in relation to the transect survey heat maps to better relate the dark areas to the known bat activity across the site.

Can Figure 5.3 be redrawn as a contour map of the illuminance levels?

Species impacted by Artificial Light At Night (ALAN)

It is well documented that artificial light at night (ALAN) has impacts both within and beyond the lit area on a range of fauna, not only bats, otters and dormice, but also, for example, on birds and invertebrates. See below for just a small selection of the available research.

<https://besjournals.onlinelibrary.wiley.com/doi/10.1111/1365-2664.14373>

<https://royalsocietypublishing.org/doi/full/10.1098/rsbl.2022.0281>

<https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/ecs2.3994>

<https://royalsocietypublishing.org/doi/abs/10.1098/rspb.2012.3017>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6448770/>

<https://www.nature.com/articles/s41598-020-68667-y>

The impacts of the introduction of ALAN into a currently dark site need to be assessed therefore not just in relation to local bat species, but also to the other species and groups of species referred to above. Avoidance and mitigation measures will need to be added to the proposal for consideration.

NB an amended Document 1b has not been provided.

2a COMMENTS REGARDING ES (ADDENDUM) CHAPTER 8: ECOLOGY (PLUS APPENDICES 8.1 – 8.14) APRIL 2024

Page 4, within 8.1.4 of the addendum – *“Some SSSI landtake remains unavoidable, however, in order to deliver the indoor snow centre, which is the ‘wholly exceptional’ central focus of the scheme.”*

The SSSI land take⁸ is unavoidable and, consequently, so is the damage to the SSSI caused by a development scheme that is not necessary for the management of the site (an indoor snow centre). Therefore, the development must be avoided in accordance with Planning Policy Wales 12 (6.4.25, page 154 – see Box 3).

Under wholly exceptional circumstances, there ‘may’ be instances where development on a SSSI would be allowable. However, this would *only be* where development is appropriate and is not likely to damage a SSSI and there is broad and clear agreement for mitigation and enhancement as part of a development plan (see PPW12, 6.4.27, page 155).

The development is not considered to be appropriate, in that it is not necessary for the management of the site. In addition, it has been established that the development will damage/remove at least 3.35% of the SSSI. On this basis, even if the development was found to be wholly exceptional, the development would be ruled out.

⁸ 6.08ha (3.35%) of the total SSSI area is within the proposed development – this represents 19.93% of the area of the development.

Box 3

Sites of Special Scientific Interest

6.4.24 SSSIs are of national importance. The Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000, places a duty on all public bodies, including planning authorities, to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features by reason of which a SSSI is of special interest. SSSIs can be damaged by developments within or adjacent to their boundaries, and in some cases, by development some distance away.

6.4.25 **Development in a SSSI which is not necessary for the management of the site must be avoided.** This is a matter of principle to ensure that these sites can continue to fulfil their role at the heart of resilient ecological networks. What may be necessary for the management of a site will need to be considered on a case by case basis but it is likely to be limited to activities needed to meet its conservation objectives, including restoration and nature recovery, as well as site management infrastructure, natural flood management and other appropriate nature based solutions. There may be desirable interventions in SSSIs relating to public access, active travel, educational projects and other minor development necessary to secure its role as a living landscape. This may include agricultural development, such as new barns, slurry stores required to reduce pollution, barn conversions to support tourism or other alterations or extensions to existing houses or buildings on existing employment sites where effects on the features for which a site has been designated can be considered to be acceptable.

6.4.26 **There is a presumption against all other forms of development in a SSSI as a matter of principle** and this presumption should be appropriately reflected in development plans and development management decisions. **There is also a presumption against development not within a SSSI but likely to damage a SSSI.** In such cases, proposals must be carefully assessed to ensure that effects on those nature conservation interests which the designation is intended to protect are clearly understood and development should be refused where there are adverse impacts on the features for which a site has been designated. International and national responsibilities and obligations for conservation should be fully met, and, consistent with the objectives of the designation, statutorily designated sites should be protected from damage and deterioration, with their important features conserved and enhanced and the capacity for restoration demonstrated by and through appropriate management.

6.4.27 In **wholly exceptional circumstances and only where development is considered to be appropriate and is not likely to damage a SSSI** and there is broad and clear agreement for mitigation and enhancement as part of a development plan **should development be proposed.** This means that development will be considered unacceptable in the absence of an agreed position in a development plan which indicates that it is acceptable in terms of its effect on the notified features of a SSSI.

6.4.28 Before authorising development outside of a SSSI but likely to damage any of the notified features of a SSSI, planning authorities must give notice of the proposed operations to NRW, and must take its advice into account in deciding whether to grant planning permission and in attaching planning conditions. **Where local planning authorities are minded to grant planning permission against the advice of NRW they must notify Welsh Ministers.**

The planning submission refers to the step-wise approach, however, in line with PPW12, interaction with the step-wise approach should be avoided for all statutorily designated sites (including SSSIs) – see Figure 13, page 154 (PPW12).

Page 4, within 8.1.8 of the addendum – *“In the first instance this [the focus of mitigation and compensation] will be in the wider landholding where the opportunity to secure optimised management of both SSSI and non-SSSI resources will be taken.”*

Irregardless of any planning application, there is meant to be appropriate management undertaken by a landowner within a SSSI. NRW should therefore be using the powers they already have to enforce appropriate management of this SSSI site.

Page 5, within 8.1.10 of the addendum – *“With the scheme also incorporating enhancement and secured optimal management at Blaencanaid Farm, the net effect is adjudged to be **positive** in nature conservation terms.”*

Page 16, within 8.5.12 of the addendum – *“Similarly, any adverse effects arising from the anticipated uplift in visitor pressure on the retained parts of the SSSI following completion of the development are expected to be outweighed by improved habitat and visitor management across the larger part of the SSSI that will be retained, such that the balance delivered is net **positive** in ecological terms. The application scheme includes the delivery of off-site compensation at Blaencanaid Farm to ensure that the net effect of the proposals on ecological receptors is indubitably in the **positive**.”*

It is considered that the net positive effect, referred to above, has not been demonstrated.

Page 7, within the addendum - *Table 8.1*

<i>Habitats and flora</i>	<i>As well as a review of archive material, including a comprehensive community classification survey by Bosanquet and Stevens in 2005, the baseline is informed by site-wide surveys by Bioscan since 2015, most recently in 2021, with targeted additional work in 2022 and 2023.</i>	<i>Pre-2021 surveys cover the wider landholding with 2021, and 2022 and 2023 surveys focused on Application Site and adjoining areas to 250m.</i>
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The results from 2015, 2021, 2022 and 2023 have not been supplied.

Page 15, within 8.5.1 of the addendum – *“Details of the proposals and how the design has adopted a step-wise approach to avoiding harm and securing net benefits for biodiversity are provided in Chapter 3 of this ES as well as in the Design and Access Statement and other submission material.”*

PPW12 (2024) has updated the stepwise approach – this has not been taken into consideration.

Page 18, within 8.6.4 of the addendum – *“In this case, outputs from Metric 3.1 (and subsequent revisions) indicate that, of itself, beneficial management of the balance of the landholding, including the larger part of the SSSI, has the potential of itself to deliver net outcomes close to neutral.”*

No detail of the metric quoted above have been supplied.

Page 19, within 8.6.6 of the addendum – *“... a draft Nature Conservation Management Plan submitted with the application. This draft NCMP has been drawn up in discussion with NRW and the applicant will commit to a final fully prescriptive version secured via a pre-commencement condition on the planning consent.”*

“The implementation of this management plan is adjudged to have beneficial consequences for the on and off-site habitats within its ambit that will offset the net negative impacts from the development considered in isolation. This accords with the step-wise approach and the application of the DECCA framework and the result will be a net benefit to biodiversity.”

As previously referred to, there is meant to be appropriate management undertaken by a landowner/occupier/tenant within a SSSI. NRW should therefore be using the powers they already have to enforce appropriate management of this SSSI site as drawn up within the submitted Heads Of Terms NCMP (see Box 4 below for an extract from the NRW website).

Box 4

Damage to SSSIs

If your SSSI isn't being cared for or is being damaged, we will try to resolve the issue with you. We'll give advice and work with you to reach an agreement. If this is not possible, we can:

- Send a warning letter*
- Issue a management scheme explaining how the site should be managed, with or without including a financial offer*
- Issue a management notice requiring specific works to be done (if the scheme is refused or not complied with)*
- Enter the site to complete the work identified in the management notice (recovering costs from the person the notice was served to)*
- Start legal proceedings, which can lead to a fine and the court imposing an order for the site to be restored at the offender's expense*
- In exceptional circumstances, pursue a compulsory purchase order*

Pages 20 + 21, within 8.7.1 of the addendum – *“There will unavoidably be net loss of designated SSSI land as a short-medium term consequence of the direct impacts of the development, albeit loss of features forming part of the primary basis for designation has been largely or wholly avoided. Indirect effects will be much more spatially delimited as a consequence of effective design mitigation, e.g. in respect of lighting and drainage treatments at the boundaries of the Application Site. It is intended that the on and off-site compensation proposals will secure a means to compensate for these direct and indirect effects in the medium to long-term via enhancements to other designated or non-designated land. This **could deliver a net neutral or even net beneficial result** in terms of SSSI land area in the medium to long term, but **this remains subject to uncertainty at this stage and is thus best portrayed as a best case**. It is relevant to note that the immediately adjacent land at Blaencanad Farm that is subject to an option has previously been considered for SSSI designation but subsequently rejected. One outcome of secured long-term optimum management of that site **may be the prospect of a future extension** of the Cwm Glo a Glyndryys SSSI to encompass this land. This could potentially result in the **6ha loss of SSSI** to development **being compensated by 15ha of new SSSI**. **The worst-case outcome** is that there will be a permanent net loss of SSSI land area of minor magnitude at national level, moderate magnitude at regional level and major magnitude at Borough level and below. **This would be a significant adverse impact on a nationally important resource that would need to be weighed in the balance** against the economic and social benefits of the scheme to determine if they are **wholly exceptional** to the point that the presumption against such losses was overcome, and also against the significance of that loss in terms of the ecological integrity and resilience of both the remaining part of the Cwm Glo a Glyndryys SSSI and the wider SSSI series more generally. In this context, it is significant that through the stepwise approach and development design, the elements of SSSI land directly affected have been minimised and furthermore they do not support the principal interest features underpinning the designation, while the adjacent compensation land does.”*

There are several points to be made in response to the above paragraph. Firstly, the language used does not demonstrate that there will be a definite benefit for biodiversity, e.g.,

- ‘... *could* deliver a net neutral or even net beneficial result.’
- ‘... this remains *subject to uncertainty* ...’
- [Blaencanaid Farm] ‘... *may* be the prospect of a future extension’
- ‘This *could potentially* result in the 6ha loss of SSSI to development being compensated by 15ha of new SSSI.’

This is at odds with PPW12, which states that development *must* provide a Net Benefit for Biodiversity.

The focus of the supplied information seems to be on compensation for the loss of SSSI, however a larger amount of SINC habitat will be impacted. For example, 19.93% (6.08 ha) of the development area is within the SSSI, but 96.85% (29.52 ha) of the development area is within SINC 36 (Rhydycar West). Therefore, more information regarding compensation for SINC habitat is needed.”

The paragraph also states a worst-case scenario

- “*The worst-case outcome ... would be a significant adverse impact on a nationally important resource ...*”

As previously referred to, this type of impact would only be acceptable, according to PPW12 under certain criteria (“*In wholly exceptional circumstances **and** only where development is considered to be appropriate **and** is not likely to damage a SSSI **and** there is broad and clear agreement for mitigation and enhancement as part of a development plan should development be proposed.*”)

Page 145, within 6.4.5 of PPW12 – “*Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it **must provide a net benefit for biodiversity** and improve, or enable the improvement, of the resilience of ecosystems..*”

“*While there is a well-established policy presumption against development likely to damage a SSSI, most recently expressed in the updated chapter 6 of PPW, the particular qualitative features of the affected area, the future security of the special interest features over the wider unaffected SSSI and non-SSSI land and the weight of need for the development are matters germane to the consideration of the weight that should be applied to the impact on the SSSI in considering the acceptability of this development in policy terms.*”

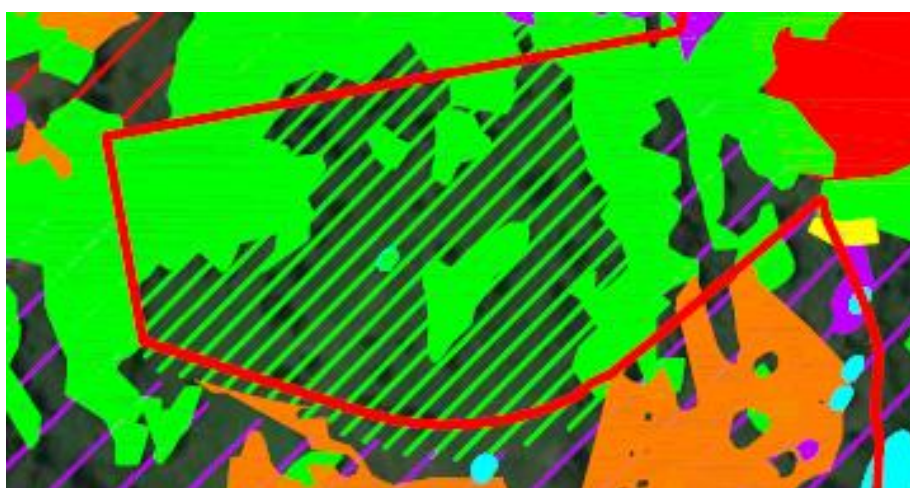
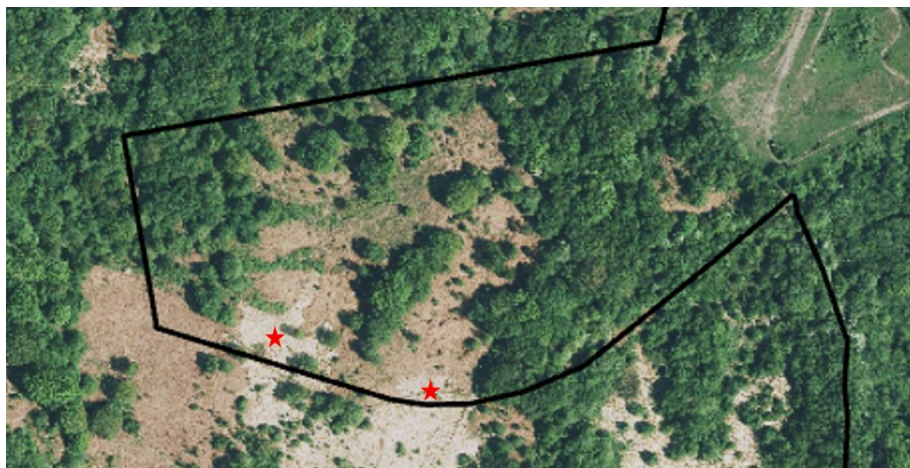
1. The habitats within the section of SSSI to be impacted by the proposed development (as mapped by Bioscan) include ‘Woodland and Scrub’, ‘Bracken Ffridd’ (these two habitats combined dominate), with smaller areas of ‘Purple moorgrass rush pastures’, ‘Lowland heathland’ and plus a habitat type not included within the key (shown on the plan as purple diagonal lines).

As stated in the NRW SSSI citation document:

‘*Cwm Glo a Glyndyrys is of special interest for its extensive areas of marshy grassland, species-rich neutral grassland and acid grassland, **‘and’ for the association of these habitats with others including woodland and heath.** It is also of special interest for its outstandingly diverse assemblage of grassland fungi, including 32 species of waxcap *Hygrocybe* spp, making it one of the best sites in Britain.*’

It is clear therefore that the section of SSSI proposed to be impacted contains special interest habitats, i.e., marshy grassland (albeit a small amount), which is associated with woodland and heath.

Furthermore, aerial imagery of the area in question from 2023 shows other clear areas of marshy grassland (Molinia) on the southern boundary (near the red stars) shown on the habitat map as within the Bracken Ffridd – see plans below.



2. The habitats in this area, whilst they have changed a small amount since their last designation (in 2008/09), are not significantly different as they exist today. They were deemed important enough areas to have been included in the SSSI boundary when the site was designated and logically therefore this should remain the case.
3. The issue of which habitats will be disrupted and whether they are the habitats of the principle designation for the SSSI is really a moot point unless the criteria regarding wholly exceptional circumstances etc is met.

3 EUROPEAN PROTECTED SPECIES CONSERVATION STRATEGY APRIL 2024

The document sets out broad principles rather than specific detail. Whilst this information provides (as the document suggests) *an amount of reassurance*, there is insufficient detail to provide full confidence.

Great crested newt

2.2.7, Page 6 – “At least 2 ponds will be restored or enhanced for GCN ...”

Restoration or enhancement of ponds would need to be undertaken *prior to commencement of works*. New ponds must also be proposed?

No quantification of the impacts on the habitat suitable for GCN terrestrial activity.

BATS

3.2.3, page 9 – the Bat Mitigation Guidelines reference is out of date. The revised guidelines are from 2023:

Reason, P.F. and Wray, S. (2023). UK Bat Mitigation Guidelines: a guide to impact assessment, mitigation and compensation for developments affecting bats. Chartered Institute of Ecology and Environmental Management, Ampfield.

3.2.7, page 10 – “... further surveys will naturally be required ...”. Does this mean further surveys of trees already surveyed or of trees yet to be surveyed?

4.1.2, page 12 – “... further surveys will be inevitably required ...”.

Survey work for protected species cannot be conditioned and would be required prior to determination. If such information has not been supplied, the application could not be supported.

The information contained within the European Protected Species Conservation Strategy document is relatively broad in nature. The detail is insufficient. NB see also comments from NRW (dated 12th July 2024) regarding great crested newt and bats. In summary:

“Overall, we consider there is insufficient information with the application to confirm the likely impacts of the proposals on great crested newts and bats. Without this information it is difficult for us to advise you that the proposals are unlikely to result in a detrimental impact to the maintenance of the favourable conservation status of the populations of these species ...”

4 HEADS OF TERMS NATURE CONSERVATION STRATEGY APRIL 2024

“Planning application P/23/0065 has yet to be determined. It is envisaged that as and when a positive determination (i.e. a grant of planning consent) is achieved, the Heads of Terms set out within this document will be worked up into a fully detailed and finalised Nature Conservation Management Plan, in liaison with relevant stakeholders such as Natural Resources Wales and Merthyr Council. It is envisaged that this finalisation process would be secured by means of a planning condition on any such consent.”

“The purpose of providing a HOT version of the NCMP at this stage is to provide consultees such as Natural Resources Wales with sufficient detail to enable them to provide advice and comment on the relative weight to be attached to the delivery of positive nature conservation management for the balance of the landholding, as set against the acknowledged impacts from the development (as set out and assessed in the submitted Environmental Statement).”

Scope:

- the undeveloped balance of the Marvel landholding at Rhydycar West:
 - c.175.3ha of the Cwm Glo a Glyndyrys SSSI;
 - c.17.3ha of additional land, mostly falling within the Rhydycar West SINC; and
 - c.15ha additional adjoining SINC land at Blaencanaid Farm

Figures and Appendices are referred to, but not present within this document.

Reasons for the decline/deterioration in the condition of onsite SSSI habitats (whether deemed to be principle or secondary interest features) is consistently accounted for by inappropriate management due to a lack of grazing activity.

As previously referred to – appropriate management of the SSSI could be enforced by NRW without the need to allow development. NRW raising no objection to this scheme would set a worrying precedent for allowing development on a part of a SSSI to secure appropriate management of the wider site.

NRW's comments from 12th July 2024 state:

“The SSSI habitat features are currently in unfavourable condition and not achieving the conservation objectives we would expect. The applicant has recognised the current condition of the SSSI. They state that the SSSI condition – including the range and location of SSSI habitats – which was recorded in 2009 could act as the baseline for the desired condition in terms of its conservation and restoration. We would be agreeable to this approach.

Therefore, the proposed long-term management measures set out in the Heads of Terms Nature Conservation Management Plan will first need to restore the SSSI to this agreed 2009 baseline condition (i.e. to reach the starting point before net benefit for biodiversity can be recognised). This should not be mistaken for mitigation or enhancement in the context of the step-wise approach. If and only when this condition is passed, enhancements and biodiversity net benefit would be achieved.”

NB there is no real idea of the timescale that might be involved in reaching the baseline state and consequently what the timescale would be for NBB to be achieved.

The area of SSSI impacted overlaps with the SINC sites.

The current state of SINC habitat outside of the SSSI that will be impacted is not explored in as much detail as is the SSSI habitat – and only referred to in terms of bats, reptiles and badger. Again, there is a reference to grazing deficiencies in terms of a long-term risk to grassland structure for reptiles.

It is unclear whether there has been a full baseline survey undertaken at Blaencanaid Farm. Not details have been provided. PPW12 states that off-site compensation should be informed by a full ecological assessment to establish baseline information.

“Bioscan have undertaken an exercise of overlaying Bosanquet and Stevens’ habitat map from their 2005 report with modern day aerials, calibrated by ground truthing and close experience of the site. This allows the main loci of habitat losses to scrub invasion, expansion of dense bracken cover, Japanese knotweed invasion and other changes in the distribution and quality of the habitats on the site to be identified and mapped ...”

The results of this exercise have not been provided.

Management prescriptions comprise a series of measures for each of seven management compartments. For six of the compartments with a small amount of variation in the detail, the measures can be categorised as follows:

1. Adjusting the grazing regimes
2. Scrub and bracken control
3. INNS control
4. Pond restoration
5. Minimising public access
6. Woodland management

Management compartment seven is specific to BF and the measures again cover an adjustment in grazing regime, but also restoration of the motorcycle track and other semi-improved or improved components.

Monitoring in Y2, Y5, Y10 and then at 5 yearly intervals for the lifetime of the development.

Again, all measures that could be enforced by NRW without the need to allow development.

Granting planning with management of the off-site areas then being subject of a Section 106, the responsibility for enforcing appropriate management of the site is then effectively transferred from NRW to MTCBC.

5 GREEN INFRASTRUCTURE STATEMENT (GIS) APRIL 2024

The development should not cause significant loss of habitats or species, locally or nationally and must provide a Net Benefit for Biodiversity (NBB) and improve the resilience of ecosystems.

The steps taken towards NBB must be demonstrated by means of the Step-Wise Approach (see Table below for comments) ...

Steps in Step-Wise Approach	PPW12 – in summary	Text from Document 6 (GIS)	LPA ecologist comments
Avoid	<i>The first priority for planning authorities is to avoid damage to biodiversity in its widest sense (i.e. the variety of species and habitats and their abundance) and ecosystem functioning. Where there may be harmful environmental effects, planning authorities will need to be satisfied that any reasonable alternative sites (including alternative siting and design options) that would result in less harm, no harm or benefit have been fully considered.</i>	Both the location of the development within the wider landholding and the detailed positioning and extent of the Application Site have been configured through numerous design iterations in order to firstly avoid impact on the SSSI (Step 1 of the Stepwise approach) ...	The GIS comments do not state whether other reasonable alternative sites have been considered. Also, Page 4 of the document only refers to Step 1 in terms of the SSSI, rather than the avoidance of damage to biodiversity across the development site as a whole. NB there have been region-wide searches for appropriate compensation land. Was a similar search undertaken for a site where less harm or no harm to biodiversity (when compared to the currently proposed site) was possible? This information has not been provided.
Minimise	<i>Applicants, in discussion with planning authorities, must seek to minimise the initial impact on biodiversity and ecosystems by:</i> <i>maintaining the largest possible area of existing habitat;</i> <i>ensuring that retained habitats continue to be well connected to adjacent habitats;</i> <i>retaining existing features, develop a management plan for their future care and use appropriate buffers to protect</i>	... and then to ensure that overlap with the designated Cwm Glo a Glyndyrys SSSI is restricted to the absolute minimum necessary (Step	This deals with 'maintaining the largest possible area of existing habitat' point, but does not explore the remaining points. Again, the text on page 4 just refers to the SSSI in isolation.

	<i>these from construction and operational impacts; and</i> <i>using proven innovative/creative solutions (where required) to minimise damage.</i>	2 of the Stepwise approach).	
Mitigate/Restore	<i>Mitigation measures are required to limit the negative effects of a development. Mitigation and restoration measures must be designed to repair damaged habitats and disturbed species - in excess of like for like. Mitigation or restoration measures should seek to build ecosystem resilience within the site and where possible the wider area.</i>	See page 24 of Document 6	The document discusses Step 3 in terms of the loss of trees and scrub alone. It does not refer to any other habitat types that will be lost. Tree planting and woodland creation is discussed and it is stated that sufficient space is set aside for green infrastructure (referring presumably only to trees and woodland). What are the current habitats in the areas earmarked for tree planting – are they suitable? Trees must be planted in the right places and not at the expense of other equally valuable habitat(s). This information is not included. The document refers to Step 4, but not Step 5. There is no statement regarding the need or otherwise for off-site compensation.
Compensate on site	<i>Where like for like mitigation measures are not possible, it may be necessary to consider on site compensation measures in the first instance.</i>		
Compensate off site	<i>When all the steps above have been exhausted, and where modifications, alternative sites, conditions or obligations are not sufficient to secure biodiversity outcomes further on-site/immediately proximate, as a last resort off-site compensation for unavoidable damage must be provided.</i>	-	No mention of Step 5, although Blaencanaid farm has been referred to in terms of compensation for disruption to the SSSI.

... and by using the **DECCA** framework ...

Diversity (between + within ecosystems).	Extent (or scale of ecosystems).	Condition (of ecosystems, in structure + functioning).	Connections (between + within ecosystems).	Adaptability (of ecosystems, including ability to react to pressures brought about by, e.g., climate change).
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This has not been demonstrated and the GIS must include this DECCA assessment (at present, DECCA is just referred within the GIS and not explored fully).

Other comments re Document 6

- Page 11, Figure 2: Tree Constraints Plan – the key includes symbology for ‘veteran trees’ (yellow star) and ‘buffer for veteran trees’ (orange circle), however, the plan only seems to feature a single yellow star and an associated orange circle cannot be clearly seen.
- All species must be native species – no ornamental or cultivars/nativars will be used.
- PPW 12 also states that “*Each stage of the step-wise approach must be accompanied by a **long term management plan** of agreed and appropriate avoidance, minimisation, mitigation/restoration and compensation measures alongside the agreed enhancement measures. The management plan should set out the immediate and on-going management of the site, future monitoring arrangements for all secured measures and **it should clearly identify the funding mechanisms** in place to meet the management plan objectives. The management plan must set out **how a net benefit for biodiversity will be achieved within as short a time as possible** and be locally responsive and relevant to local circumstances.*”

The GIS cannot be properly evaluated as full details of the proposed post-development habitats and details of the long-term management plan have not been provided.

CONCLUSIONS

Taking into consideration the ecological information provided within the Environmental Statement and other associated documents, the negative impacts on protected habitats, species, biodiversity and ecosystem resilience cannot be fully assessed.

Particularly given the lack of sufficiently detailed mitigation, compensation or enhancement measures provided to date.

PPW12 *“Finally, where the adverse effect on biodiversity and ecosystem resilience clearly outweighs other material considerations, the development should be refused.”*

Based on the information supplied to date, there is insufficient to allow a judgement to be reached regarding the adverse effect on protected species, biodiversity and ecosystem resilience.

On this basis, the application must be refused.