

Heading:

REFERENCE NO. 31/2013/1079/PFHY
LAND AT ELWY MEADOWS
LOWER DENBIGH ROAD, ST ASAPH

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 Application Site

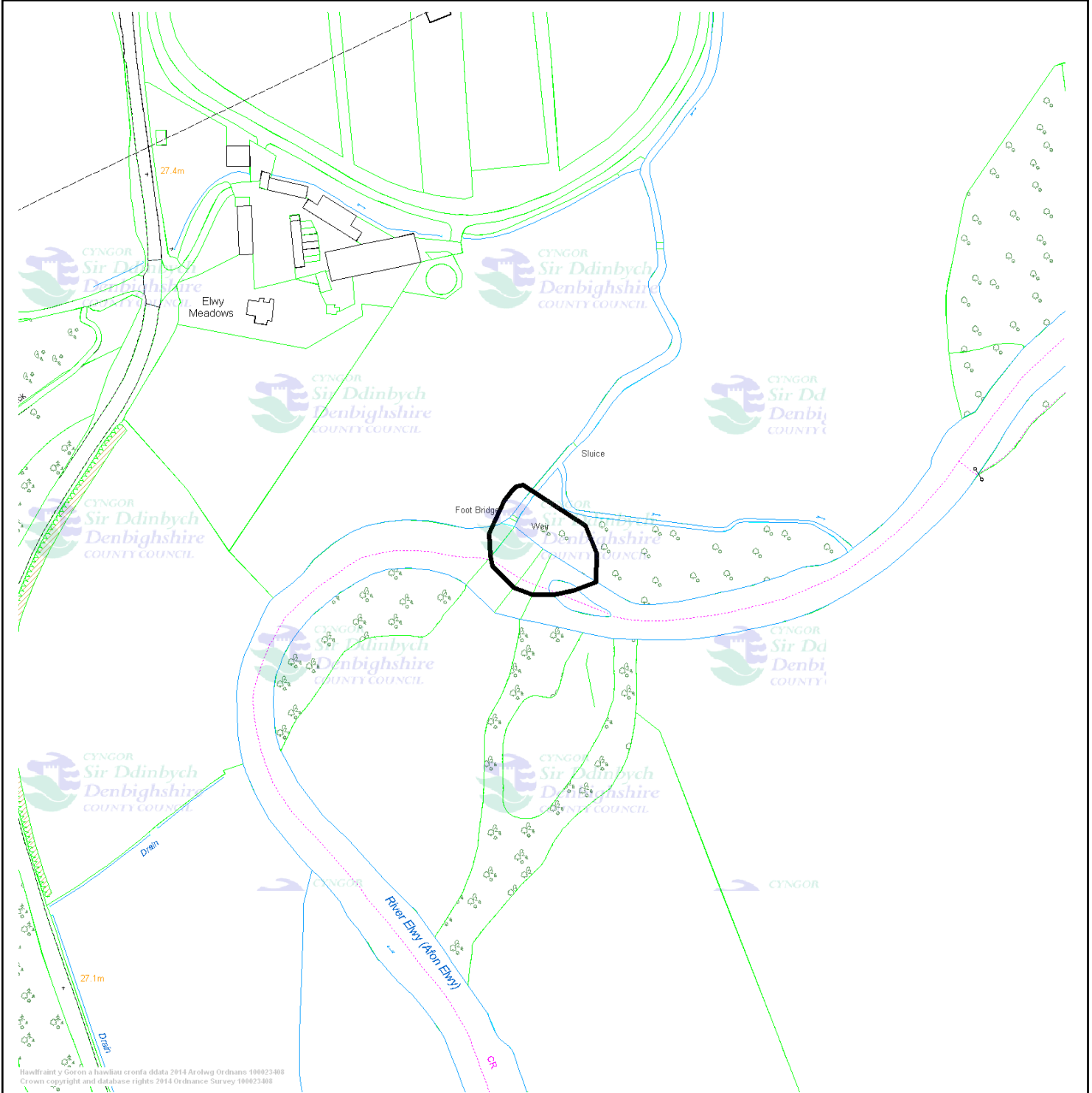


Date 25/9/2014

Scale 1/2500

Centre = 303891 E 372442 N

This plan is intended solely to give an indication of the LOCATION of the application site which forms the subject of the accompanying report. It does not form any part of the application documents, and should not be taken as representative of the proposals to be considered, which are available for inspection prior to the meeting.



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31/2013/1079

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PRELIMINARY DRAWING FOR CONSENTING PURPOSES – NOT FOR CONSTRUCTION

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SITE AREA
 1,931.8 sq. m

TOLERANCES
 The final orientation may vary marginally as site conditions dictate.

PLANNING SERVICES
 RECEIVED
22 AUG 2013
 DENBIGH COUNTY COUNCIL
 DENBIGH

--- Development Boundary
 - - - - - Temporary Construction Access

Project:
 Maes Elwy Hydro Scheme

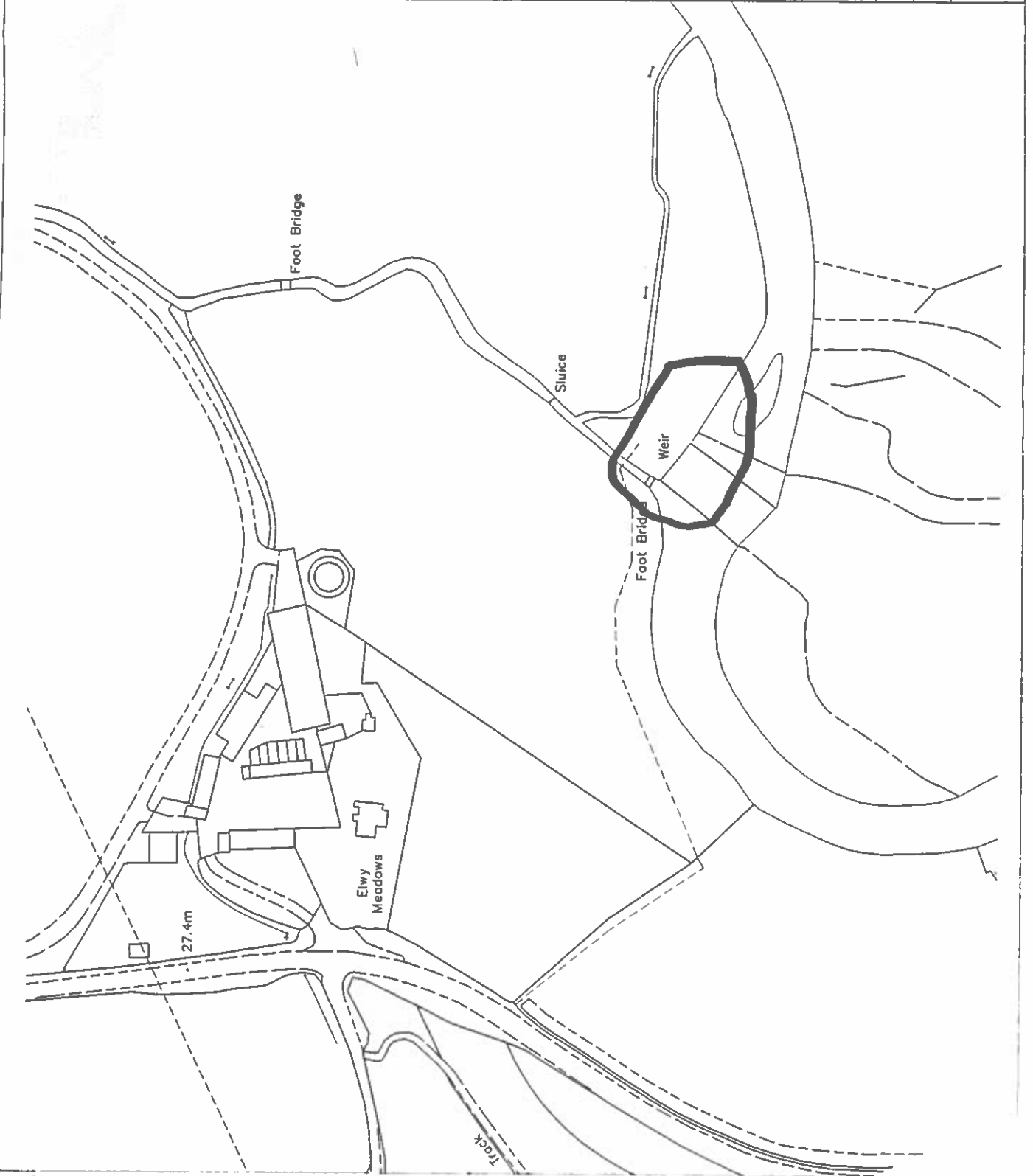
Drawing Title:
 Location Plan

Drawing Number:
 NWHP_ME_Location_Plan

Client:
 Maes Elwy Hydro

Scale: 1:1,250 @ A3	Revision: A	Sheet: 1 OF 1
Drawn by: AJF	Date: 05/08/2013	

North Wales Hydro Power



AERIAL VIEW

31 / 2013 / 1079 / PF



Approximate Peg Coordinates:
Intake: SJ 03878 72454
Turbine House: SJ 03885 72455
Outfall: SJ 03897 72439

Site 66: Hydro Scheme at Elwy Meadows Hydro – Afon Elwy
OS Location Plan and Illustrative Aerial Overlay
Not to Scale
29.07.2013

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PRELIMINARY DRAWING FOR
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Notes:

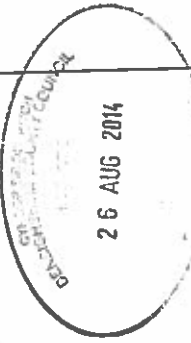
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TOLERANCES

The final orientation may vary marginally as site
conditions dictate.

REVISED PLAN

— Power Cable



26 AUG 2014

Project:

Moes Elwy Hydro
Scheme

Drawing Title:

General Layout

Drawing Number:

NWHP_ME_General_Layout

Client:

Moes Elwy Hydro

Scale: 1:285 A3

Revision: R

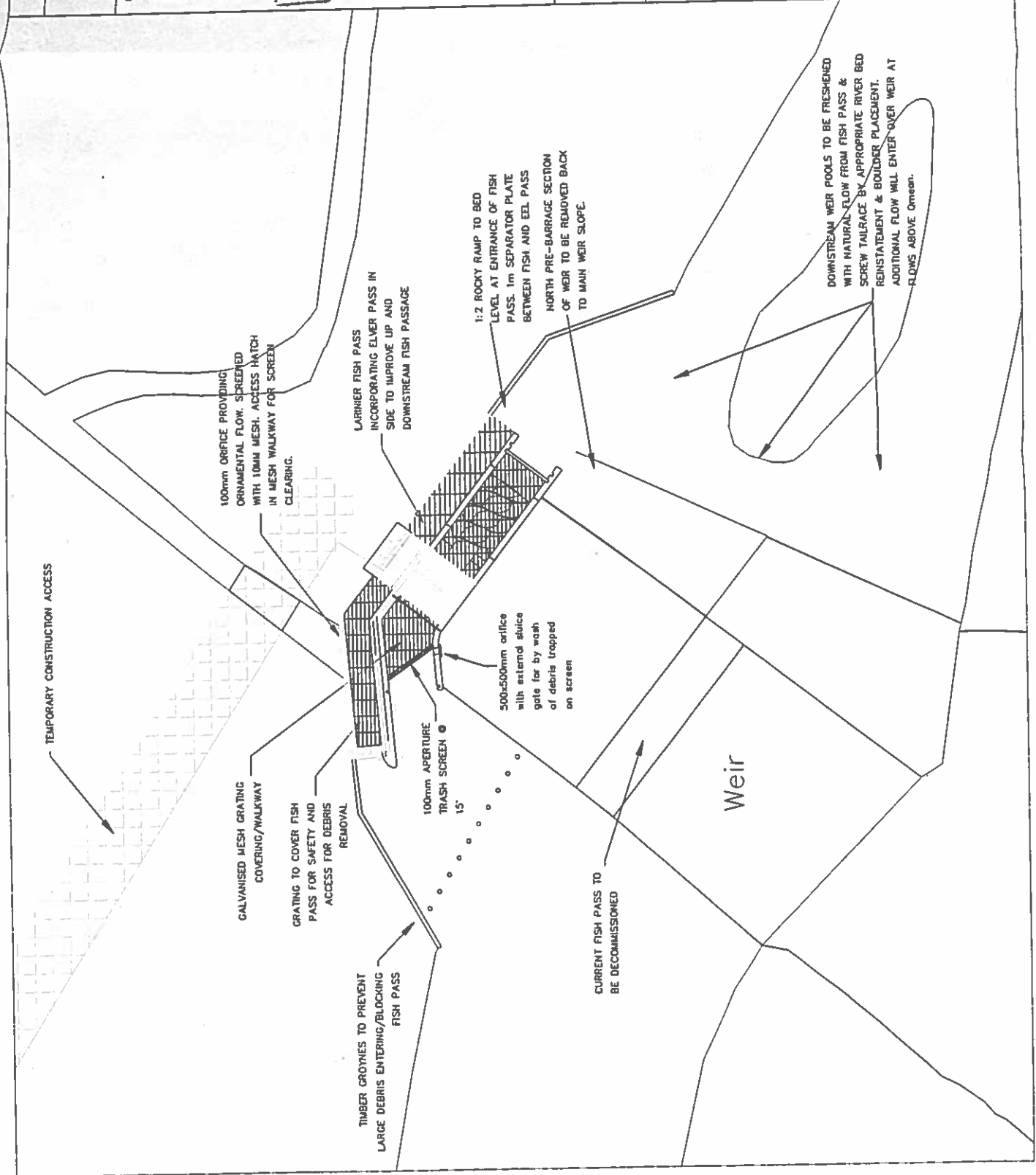
Sheet: 1 OF 4

Drawn by: AJF

Date: 15/08/2014



North Wales
Hydro Power



11 2013/11079/1/F

SECTIONAL PLAN
31/2013/11079

PRELIMINARY DRAWING FOR
CONSENTING PURPOSES - NOT
FOR CONSTRUCTION

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CONSTRUCTION NOTES
REVISED PLAN

The hydraulic structure shall be constructed in concrete with the following reinforcement and approved where necessary.

Powerhouse

- Roofed with local slate
- Timber clad with internal noise insulation
- Vents to be baffled internally to further control any noise emission.
- Doors to be double slurred with noise attenuation built in.

Tailrace

To prevent scour and erosion of the river bed, a plunge pool will be created from locally sourced stone/boulders at the end of the tailrace of the screw and fish pass.

TOLERANCES

The final orientation and dimensions may vary marginally as site conditions dictate.

Project:

Maes Elwy Hydro
Scheme

Drawing Title:

General Arrangement

Drawing Number:

NWHP_ME_General_Arrangement

Client:

MAES ELWY HYDRO

Scale:

1:200 @ A3

Revision:

T

Sheet:

1 of 6

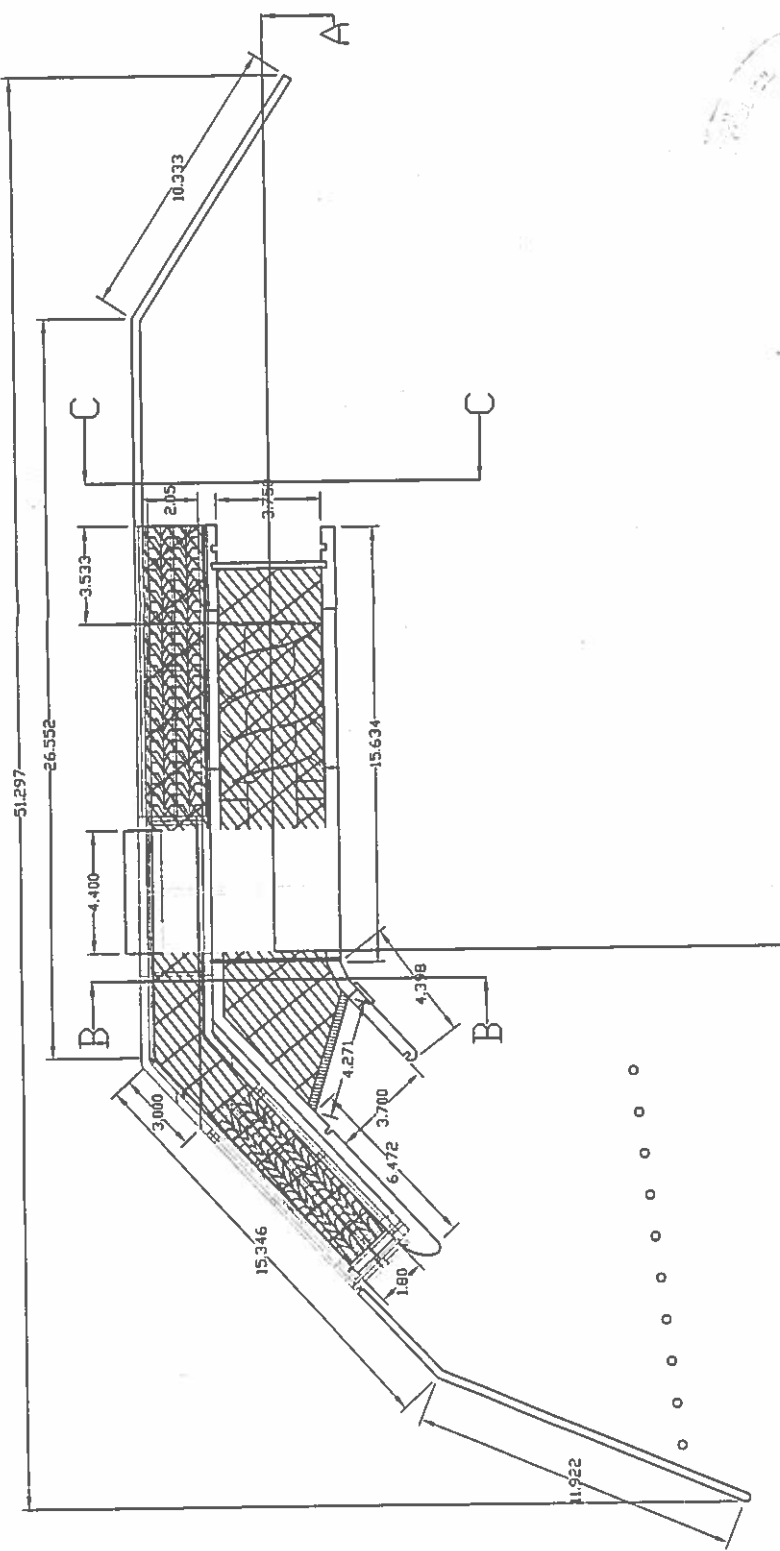
Date:

26/08/2019

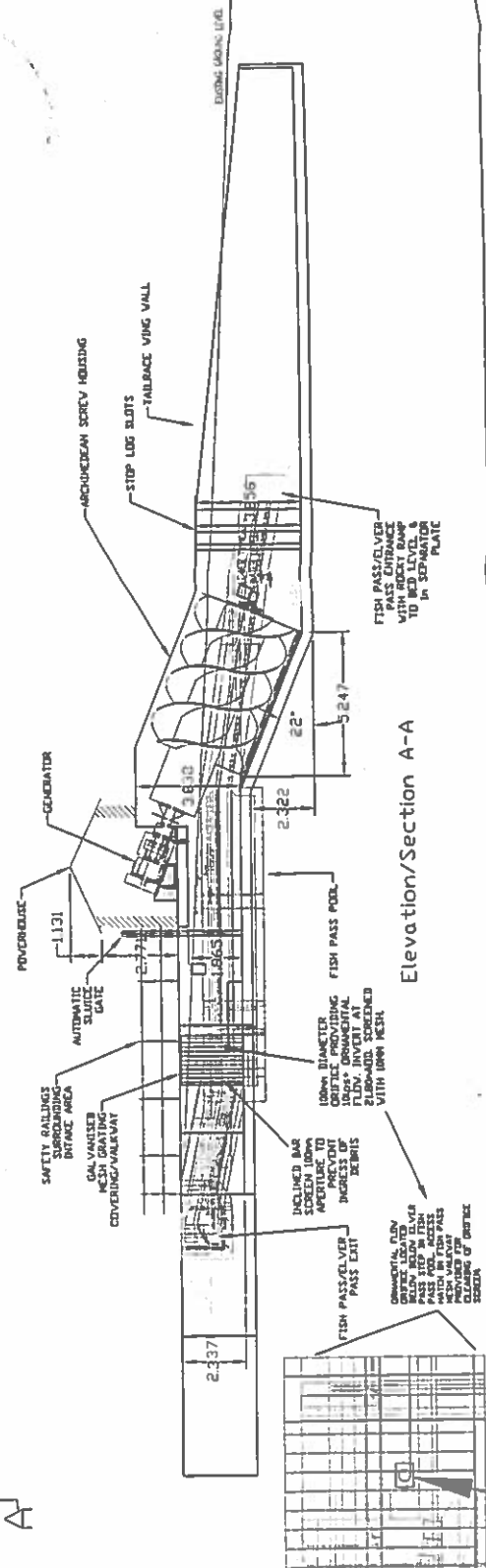
Drawn by:

AJF

PLAN VIEW



20 AUG 2014



Elevation/Section A-A

WARD: Trefnant

WARD MEMBER(S): Cllr Meirick Lloyd Davies

APPLICATION NO: 31/2013/1079/ PFHY

PROPOSAL: Installation of micro hydro electric scheme

LOCATION: Land at Elwy Meadows Lower Denbigh Road St Asaph

APPLICANT: MrRichard ReesNorth Wales Hydro Power Ltd

CONSTRAINTS: C2 Flood Zone
Main River

PUBLICITY UNDERTAKEN: Site Notice – No
Press Notice – No
Neighbour letters - Yes

CONSULTATION RESPONSES:

CEFN MEIRIADOG COMMUNITY COUNCIL –

“Cefn Meiriadog Community Council have no objections, they fully support this application”

ST ASAPH CITY COUNCIL –

“ St. Asaph City Council have no objections to the Hydro System per se, we would insist on a maintenance programme being included and that the weir be fit for purpose prior to the installation of the Hydro System. We ask for assurance from Planning that these conditions are in place prior to approval of the planning.”

TREFNANT COMMUNITY COUNCIL -

No comments received at time of preparing the report

NATURAL RESOURCES WALES (NRW)

In response to consultation on the planning application, NRW have provided the following comments:

In relation to the amended proposals –

NRW have no objection to the application.

- ENVIRONMENTAL PERMITTING (ABSTRACTION / IMPOUNDMENT LICENSING)
NRW confirm they have no objection in principle to the proposals and are able to issue an abstraction licence.
- FLOOD RISK –
NRW have reviewed the revised Flood Consequences Assessment and confirm the contents are generally commensurate to the type, nature, and scale of the development. Welcome proposals to incorporate flood proofing measures within the turbine house.
- FLOOD DEFENCE CONSENT –
In accordance with the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of Natural Resources Wales has been granted for the works and structures located in, under, over or within 7 metres of the bank top of the Afon Elwy, designated "main river" (Consent NE2013LD125B). Temporary in- channel works require separate Flood Defence Consent from NRW.
- POLLUTION CONTROL AND WASTE MANAGEMENT –
NRW outline measures required to minimise impacts on the watercourse, to accommodate any oil storage facilities and disposal of waste excavation or building materials
- PROTECTED SPECIES –
NRW consider the surveys and assessment in respect of statutory protected species to have been completed to a satisfactory standard for the purpose of informing the decision making process

- NRW had previously commented on the following in response to the original contents of the planning application:
- FISHERIES –
NRW have received and approved the Fish Pass Details.
- ENVIRONMENTAL MANAGEMENT –
There must be no adverse impact on water quality. The applicant should comply with NRW PPG5: Works and maintenance in or near water. Waste should be disposed of in accordance with Section 34 of Environmental Protection Act 1990. The activity of importing waste into the site must be registered as a permitted activity under the Environmental Permitting Regulations 2007.

Developments involving NRW following the deferral of the application at the November 2014 Planning Committee are dealt with in Section 1.5 of the report.

CLWYD POWYS ARCHAEOLOGICAL TRUST (CPAT)

No objection, according to OS first edition mapping the weir may be connected to the former Wigfair Isaf Mill by a long leat heading north from the weir. The weir therefore dates to at least 1874 and it probably earlier than this in origin. CPAT recommend a survey and archaeological watching brief is undertaken prior to the commencement of development.

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES – BIODIVERSITY OFFICER –

No additional comments on amended submission. Ecologist had previously expressed satisfaction that the ecological surveys undertaken are suitable and commensurate with the development and agreed with the conclusions within the report.

TREE CONSULTANT

Has assessed the submission and is aware of the basis of objections. Advises that 11 trees are proposed to be removed; of these, the best specimen is a mature ash which is of very minor importance as an amenity feature in the landscape because there are numerous other trees at this location. Other trees to be felled are either not particularly good, or poor specimens. Confirms there is confusion over reference to Black Poplars – as the specimens in the area are not Native Black Poplars, but hybrids which are not rare or important. Suggests any consent obliges replanting, details of protective barriers, and work being carried out in accordance with the Tree Protection Plan.

RESPONSE TO PUBLICITY:

Chris White (by email, no address provided)

John Lewis, Mill Brook, The Mill Yard, Lavister, Wrexham

Andrew Kelton, Fish Legal, Leominster, Herefordshire (on behalf of Rhyl and St Asaph Angling Association)

Stephen Barlow, Nefydd House, Llanefydd

David Jones, Federation of Clwyd Angling Clubs, Panorama, Rhualt

John Morris, 39 Orme View Drive, Prestatyn

David Roberts, 11 Park Drive, Carmel, Holywell

Paul King, 17 Llys Y Tywysog, Tremeirchion

Eugene Grube, 28 Rhodfa Glenys, St Asaph

Robert Hall, 6 Breezehill Park, Neston, Cheshire

Graham Whalley, 25 Grasmere Close, Prestatyn

Allan Cuthbert, 25 Ceg y Ffordd, Prestatyn (on behalf of Campaign for the Protection of Welsh Fisheries)

Ian Macdonald, Secretary, Rhyl and St Asaph Angling Association, 20 Y Maes, Denbigh

John Davidson, Bryn Rhedyn, Windmill, Pentre Halkyn, Holywell, Flintshire

Tim Mainland, Wigfair Fach, Wigfair Isa, Lower Denbigh Road, St Asaph

David Gartside, 34 Compton Way, Abergele

Martyn Hogg, Ysgoboriau, Lower Denbigh Road, St Asaph

Mr and Mrs Donaghy, Pen Ucha Roe Bach, Lower Denbigh Road, St Asaph

In objection to the proposals

Summary of representations :

Impacts on the river and river environment

Concerns over effects on migratory fish river (salmon and sea trout up and downstream migratory paths, breeding) / impacts on salmonoids / questions over fish pass suitability at a low head hydro scheme/ impact on river Elwy, maintenance/blockage of fish pass, silt and build-up of debris likely to occur/ existing schemes at Penmachno and Cefn should be monitored and negative impacts considered / concerns over decommissioning and reinstatement of weir/ changes to plans of additional concern as they involve relocation of fish pass to the north side of the turbine, which would redirect the river to the left hand bank around the weir, devastating the fishery on the upstream right hand bank and by passing the existing downstream pool; would make it impossible to monitor fish passage and respond to problems/ there would be downstream alterations to the bed of the river affecting flow and resting conditions for salmonids/ confusing and inadequate level of detail on plans to fully understand effects, including reference to 'ornamental flow', amount of water to be diverted, and impact on fishing pool upstream/ simple alternatives to modify the existing fish pass would obviate need for a new one /no mention of the state or structural integrity of the weir, heightening concerns over consequences of its disintegration/ additional concerns over construction period in dry summer months when migratory fish make their return to the river

Flood risk-

Potential impact on river flows/ potential for blockages through build up and release of debris and silting are not addressed, along with downstream consequences / document suggesting the limited risk from flooding and no increase in risk from the development is disingenuous given recent history, as the development will concentrate flow on the northern bank and the installation will constitute an additional obstruction to accumulate debris and increase flood risk beyond the site / Concerns over adequacy of information on the impact of the installation under all states of the river, in terms of impacts on the likelihood of flooding / Proposals will further restrict the flow of the river putting property at heightened risk of flooding

Impact on local economy

Significant impacts arising from degrading of fishing facility, including loss of salmon stock / would deprive local community of more money than it would return.

Biodiversity impacts

Proposal will have negative biodiversity impacts / insufficient number of species surveyed/ evidence of otter holt adjacent to site, voles and badgers are a common sight, mink are understood to be present in the area / habitat survey was undertaken in June so could not establish if salmon or sea trout spawn in the area / risk of breaches of legislation in relation to a range of species must be assessed

Visual amenity

Concern over loss of trees in particular loss of Black Poplars / no good reason to remove trees.

Noise impacts .

Concern over impact of noise in relation to turbine / potential noise from Archimedean screw on migration of salmon and sea trout

Planning policy conflicts

Conflicts with VOE 10- proposal does not demonstrate that there will be no unacceptable impact on nature conservation and wildlife.

Other matters -

Inadequate summary of representations / not all objectors included in original report

Ownership issues- NRW do not own the weir, title from the middle of the weir to the right hand side of the river bank is unclear/ Riparian rights exist and have not been considered.

Fishing rights affected- impact on viability of long established and well known sea trout and salmon fishery/ significant impact on Members of Rhyl & St Asaph Angling Association and permit holders.

Carbon reduction figures and efficiency figures queried / actual savings would be minor.

Consideration should be given to securing an undertaking / bond from the applicants in relation to the construction, implementation, and maintenance of the development, and to cover contingencies if something goes wrong

Concerns over the neutrality of the NRW in the process / independent advice should be obtained, including a structural survey of the weir as this has suffered from structural failure and could cause a surge in floodwater with downstream impacts/ poor communication by NRW with fishing associations

Inadequate awareness / regard by NRW to impact of hydro scheme at Cefn

Representations received immediately prior to the November Planning Committee meeting

Additional emails were received from Ian Macdonald, Secretary of Rhyl and St Asaph Angling Association, and from Andrew Kelton, Fish Legal, raising matters on behalf of the Association.

The emails referred to ongoing exchanges between the Angling Association and Natural Resources Wales (NRW), and in particular to what NRW had advised they were dealing with as a formal complaint from the Association over their responses to issues of concern in relation to the Abstraction Licence issued in relation to the hydro proposals at Elwy Weir. The Association advised that NRW had confirmed they were due to respond to them by the 20th November, hence the Association suggested as the County Council 'are relying on NRW as being their experts', that the application be deferred to a later meeting.

The Fish Legal email reiterated this point and suggested reliance on NRW is unsatisfactory on the basis that NRW's determination of the abstraction licence has been demonstrably inadequate. The email referred to failure to address the decrepit condition of the weir, and suggested that the Council should not be deferring to NRW in relation to all matters to do with flow issues (weir sustainability, flood risk, and fish passage). It also suggested that there may be harm to property rights which may infringe the Human Rights Act. It stated that it is essential to require a full engineering survey of the weir to ascertain repairs necessary; that the pool redesigns required under the Abstraction Licence should be in consultation with the angling and any other interests; and that provision should be made for compensation to be paid by the developer to angling right holders should there be measurable impact on the quality and capital value of the fishery affected by the development. On these grounds, as it was contended there was no consideration of such conditions by the Council, deferral was considered necessary.

Section 1.5 of the report provides detailed comments on developments since the deferral of the item at the November Committee and the relevance of matters raised by and on behalf of the Angling Association is dealt with in the Planning Assessment section of the report.

In support of the application

Edward Sample, Carter Jonas (on behalf of Cefn Estates)

Main points -

Development will complement the fish pass under construction further up the River Elwy and would make it more effective in supporting the passage of migratory salmonids through the Elwy catchment / the Elwy catchment would benefit greatly from two new fish passes.

EXPIRY DATE OF APPLICATION: 17/10/2013

REASONS FOR DELAY IN DECISION (where applicable):

- Additional information sought.
- Additional consultations

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 Consideration of the application has been deferred previously at the October and November 2014 meetings of the Planning Committee.
- 1.1.2 The October deferral was to allow additional consultations to be carried out with neighbouring Community Councils and private individuals.
- 1.1.3 The November deferral was to allow opportunity for Natural Resources Wales to confirm their position following their investigation into a complaint from the Rhyl and St Asaph Angling Association over the consideration given to representations on the Abstraction licence application, and to enable the Officer report to address the relevance of any issues arising from this process and representations by and on behalf of the Angling Association to the consideration of the planning application.
- 1.1.4 The proposal involves the development of an 81kW micro hydroelectric generating scheme on the River Elwy, in a location 150 metres to the south east of the property Elwy Meadows, some 2 kilometres south of the A525 bridge over the river in the centre of St Asaph.
- 1.1.5 The main elements of the development are –
- an intake immediately upstream of an existing weir, intercepting the original mill leat
 - a new fish pass
 - a debris screen and sluice gate (timber groynes, a finer bar screen, and a sluice gate)
 - a 3.8m X 6.3m turbine house building with larch clad external walls and a local slate roof, containing a generator linked to an Archimedean Screw
 - a tailrace, walled on the northern bank, directing flow back to the River Elwy

The plans at the front of the report give an indication of the proposed scheme.

- 1.1.6 The planning application is supported by a Design and Access Statement, a Flood Consequences Assessment, an Extended Phase 1 Habitat Survey, a Tree Survey, a Technical Summary, and a Construction Method Statement.

The Design and Access Statement provides an overview of the proposals, including commentary on the development of the scheme, its key elements, and general environmental and planning issues. Relevant points in the document include –

- The applicants are North Wales Hydro Power Ltd.
- The scheme has been developed taking account of a number of factors, based around causing the least environmental impact whilst generating as much renewable electricity as possible
- Relevant Wildlife and Tree surveys and a Flood Consequences Assessment have been undertaken. There is a Technical Summary and Construction Method Statement in the submission.
- It is stated that the scheme has been designed to minimise impacts on ecological interests with suitable mitigation proposals; pollution risks at construction stage would be minimised in accordance with the Construction Method Statement ; the consequences of any flooding have been managed down to a level which is acceptable for the nature of development proposed, including suitable flood protection measures, and there would be no material increased flood risk elsewhere; noise mitigation measures will be included in the design of the turbine house and there will be no operational noise impact; 11 trees will need to be removed to facilitate the development, the site area having been kept down to a minimum to limit the number of trees to be felled;
- There is a separate authorisation process in relation to the detailing of Hydro electric schemes, administered by Natural Resources Wales. This includes an Abstraction Licence for water to be removed from the stream, Flood Defence Consent for carrying out works in –river or close to it, and Fish Pass Approval. NRW are therefore responsible for control over many elements of the proposals, including flow associated with the hydro scheme.
- There are renewable energy benefits arising from hydro schemes, recognised in Planning Policy and guidance at local and Welsh Government level.

1.2 Description of site and surroundings

- 1.2.1 The proposed hydro scheme would be within the River Elwy at an existing weir approximately 2 kilometers south of St Asaph, in a location to the south east of the property Elwy Meadows. The B5381 (Lower Denbigh Road) runs approximately 200 metres to the west.
- 1.2.2 It is stated in the Technical Summary that the existing weir was built to provide flow for a now defunct mill, and creates an impoundment of the River Elwy.
- 1.2.3 The area is characterised by a wide river profile with low banks, riverside and field boundary trees and hedgerows.

1.3 Relevant planning constraints/considerations

- 1.3.1 The site is located in the open countryside, and is within a C2 Flood Zone as shown on the Development Advice Maps produced in association with TAN 15.

1.4 Relevant planning history

- 1.4.1 None.

1.5 Developments / changes since the original submission

- 1.5.1 In relation to the detailing of the scheme, clarification was sought from the applicant in relation to the detail of the fish pass, in relation to comments raised by objectors and NRW. Revised details were submitted in mid September 2014, and were the subject of a reconsultation exercise.
- 1.5.2 As noted above, further consultations were carried out in mid October 2014 following requests for notification to adjacent Community Councils and private properties. The summary of all consultee responses and representations received up to the date of drafting this updated version are included at the head of the report.
- 1.5.3 Following deferral at the November meeting of the Committee, there have been further exchanges with Natural Resources Wales, and additional correspondence

from the applicants. The substance of these exchanges are referred to below for Members information.

1.5.4 Officers contacted NRW immediately following deferral, requesting confirmation of their conclusions on the investigation into the Angling Association's complaint and confirmation as to whether any aspects of that investigation impact on comments NRW have made on the planning application for the hydro scheme. NRW were forwarded the Fish Legal letter which suggested that the County Council's reliance on NRW as its 'expert' is misplaced and that 'the Council should not just be deferring to the judgment of NRW in relation to all matters to do with fishing rights and flow issues' (weir sustainability, flood risk and fish passage). Officers also sought comment on detailed questions raised over land ownership issues, the need for a structural survey of the weir and details of its restoration and maintenance, construction of fish pools, and compensation for adverse impact on fish stock. NRW were asked to advise whether they remain satisfied that there is sufficient information provided with the planning application in relation to assessment of flood risk, that they do not consider there is unacceptable additional flood risk as a result of the development and finally that there are no conditions they require the County Council to impose on any planning consent which may be granted to deal with issues relating to flooding.

1.5.5 Natural Resources Wales have confirmed they have responded to the Angling Association's complaint over the processing of the Abstraction Licence application. Their advice to the County Council is as follows:
*"Natural Resources Wales is satisfied that the appropriate legislation and guidance has been followed and adhered to during the determination of the abstraction licence application. Natural Resources Wales has taken full consideration of all aspects of the application and comments provided during the advertising period. During the representation period, Natural Resources Wales were notified of the concerns regarding the impacts upon local fisheries. These impacts were taken into account based on the information provided at the time. Natural Resources Wales have considered the impact of foreseeable changes to the Afon Elwy might have on local fisheries and have concluded there will be no significant impact caused by the grant of this abstraction licence.
The applicant is not the owner of the weir and is therefore not currently responsible for any repair work to the weir. The grant of an abstraction licence cannot grant access to land or property. If the applicant needs to obtain access to both sides of the river for development purposes this will have to be resolved with the relevant land owners and is outside of our jurisdiction under the Water Resources Act 1991. Natural Resources Wales has no powers to require financial information or to require a bond."*

With respect to questions raised over the imposition of conditions on any planning approval, NRW have stated with regard to:

"a. a survey of the condition of the weir to determine the need for and carrying out of repairs;

We have not requested such a condition when providing our formal response to the planning application.

b. details of the re-design of the fish pool(s) required under the Abstraction Licence, in order to involve angling interests in the consultation process;

We have not requested such a condition when providing our formal response to the planning application as the applicant must comply with the conditions of the Abstraction Licence

c. arrangements for compensation payment from the developer to angling rights holders if there is a measurable impact on the quality and capital value of the fishery affected by the development.

We have not requested such a condition when providing our formal response to the planning application. We consider that this is an issue that your local authority should decide upon, possibly with advice from your legal department to determine whether and how such a condition would be enforceable."

1.5.6 The applicants have responded to the latest deferral of the application in the following terms –

“It was most annoying that the committee chose to defer yesterday. I wish it had been made clearer to them that the NRW licences and planning applications are standalone consents and that there is no statutory pre-requisite for either to be in place before the other and that the complaint to the granting of the abstraction licence is totally irrelevant to the planning application and not a material consideration. There appears to be a blurring of lines between the two sets of legislation by Denbighshire and we are not happy with the handling of this issue.

In other LPAs this would never have been a discussion point at all. For example in SNPA the majority of our 20+ planning permissions have all been granted prior to determination of other environmental permits such as abstractions licences because the LPAs acknowledge that they are standalone consents. For the avoidance of doubt/additional comfort SNPA use the following condition on all our planning permissions:

“The abstraction and impounding of water is to be made in complete accordance with any ‘Licence to abstract’ and ‘Licence to Impound’ as issued by Natural Resources Wales”

We would not be adverse to a similar condition being imposed on this site. Please note that Impound Licence is not relevant to this scheme so it may be more appropriate to just state “any relevant environmental permit or licence issued by NRW” etc)

We wish your report for the next committee to be clearer in the formal role of the LPA and the distinction between the different consents/legislation and we do not want the committee to be drawn into a discussion about anything that relates to the environmental licencing process ie. water flows, impact on fisheries and river habitats. It is not within the remit of the LPA or planning committee to determine the planning application based on these issues and we would like you to remind the committee of that they must focus only on the material planning considerations.

In layman’s terms this may be a useful guide worth providing to the committee:
<http://www.rtpi.org.uk/media/686895/Material-Planning-Considerations.pdf> “
(a relevant section is highlighted)

In relation to the late information reported to the November Committee, the applicants have advised:

“Picking up on the summary of these emails in the report (copied below) I would like to point out that property rights and property value and compensation are not matters that should be taken into consideration by the LPA so again we wish this to be made very clear to the committee. “

1.6 Other relevant background information

1.6.1 A briefing was organised in mid October to inform Members on the detailing of the proposals and the issues arising. A further briefing is to be held prior to the December Planning Committee.

2. **DETAILS OF PLANNING HISTORY:**

2.1 None.

3. **RELEVANT POLICIES AND GUIDANCE:**

The main planning policies and guidance are considered to be:

3.1 Denbighshire Local Development Plan (adopted 4th June 2013)

Policy VOE 1 – Key Areas of importance

Policy VOE5 – Conservation of natural resources

Policy VOE 10 – Renewable energy technologies

3.2 Supplementary Planning Guidance
SPG 18 – Nature Conservation and Species Protection

3.3 Government Policy / Guidance

Planning Policy Wales Edition 7, 2014

Technical Advice Notes:

TAN5 – Nature conservation and planning

TAN8 – Renewable energy

TAN15 – Development and Flood Risk

Circular 60/96 Planning and the Historic Environment

4. MAIN PLANNING CONSIDERATIONS:

In terms of general guidance on matters relevant to the consideration of a planning application, Planning Policy Wales Edition 7, 2014 (PPW) confirms the requirement that planning applications 'should be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise' (Section 3.1.2). PPW advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned, and that these can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Sections 3.1.3 and 3.1.4).

The following paragraphs in Section 4 of the report therefore refer to the policies of the Denbighshire Local Development Plan, and to the material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

- 4.1.1 Principle
- 4.1.2 Landscape / visual impact
- 4.1.3 Residential Amenity including noise
- 4.1.4 Ecology
- 4.1.5 Flooding and water quality
- 4.1.6 Archaeology
- 4.1.7 Other matters

4.2 In relation to the main planning considerations:

4.2.1 Principle

Members may be aware that at national level, the UK is subject to the EU Renewable Energy Directive, which includes a target of generating 15% of the UK's total energy demand from renewable energy sources by 2020. Para 12.8.1 of Planning Policy Wales (PPW) reaffirms UK and Welsh Government commitment to playing its part by delivering an energy programme which contributes to reducing carbon emissions as part of its proposals to tackling climate change. It refers to Welsh Government's Energy Policy Statement (2010), which identifies the sustainable renewable energy potential for a variety of different technologies.

For planning purposes, Figure 12.2 of PPW defines the following renewable and low carbon energy scales, which is of relevance to the application:

Scale of development	Threshold (Electricity and heat)
Strategic	Over 25 MW for onshore wind and over 50 MW for all other technologies
Local Authority – Wide	Between 5MW and 25 MW for onshore wind and between 5 MW

	and 50MW for all other technologies
Sub local authority	Between 50kW and 5MW
Micro	Below 50kW

This application therefore falls within the 'sub local authority' scale of development in PPW, which in para 12.9.9 states that such projects are 'applicable in all parts of Wales'.

TAN 8 supplements PPW and provides technical advice and guidance on renewable energy projects. It refers in Section 3.12 to Hydro–Power and the development of 'run of river' schemes in Wales, that these are generally supported, although there may be occasions where account needs to be taken of potential ecological damage, and that there is need for close liaison with the NRW as licensing authority for abstraction and impoundment.

Policy VOE 10 offers general support for proposals which promote the provision of renewable energy technologies, providing they are located so as to minimise visual, noise, and amenity impacts and demonstrate no unacceptable impact on the interests of nature conservation, wildlife, natural and cultural heritage, landscape, public health and residential amenity.

Taken together, the contents of Planning Policy Wales, TAN 8, and the policy in the LDP provide support in principle for this type of renewable energy development subject to the detailed assessment of localised impacts, which includes taking into account the potential impacts on landscape, visual and residential amenity, and ecological interests.

Officers' view is that as the proposal is for a sub local authority scale Hydro project, the principle of this development is acceptable in general policy terms. The Council has consented to a number of hydro schemes in recent years. The key issues in this instance are considered to be the local impacts of the development, which are reviewed in the following sections of the report.

4.2.2 Landscape/ visual impact

The general requirement to consider the impact of development on the landscape specific to a hydro scheme development is LDP policy VOE 10 which requires specific assessment / explanation of impact on the landscape, and mitigation proposals.

The site is not located in an area with statutory landscape designations. The turbine would be sited on a weir on an existing river. The turbine house is the largest above ground element of the development and would measure 3.8 metres by 6.3 metres, with an overall height of 3.8 metres, and would comprise a larch clad building with a slate roof. Concerns have been raised that the development would have an impact on the visual amenity of the area, including the loss of trees. It is suggested that NRW have shown no awareness of the smaller hydro scheme at Cefn and that the impact of the proposed development would be more significant than that one. The Council's Tree Consultant has no objections to the proposals and has confirmed there are no Native Black Poplars affected.

In accepting that the turbine house would be visible on the river bank, considering the size and detailing of the building, it is not considered that its visual impact and that of the other elements of the scheme would be unacceptable when completed, and following the reinstatement of the surrounding land. The design of the turbine house would be in keeping with traditional buildings in the area. Whilst there are proposals to remove trees as part of the scheme, the extent of loss is limited and is of no concern to the Tree Consultant. Officers' opinion is that the proposal would not have unacceptable impact on landscape or visual amenity, and is not in conflict with national and local planning policy.

4.2.3 Residential Amenity including noise

Local Development Plan Policy VOE 10 seeks to ensure development does not have an adverse impact on residential amenity, and this would include assessment of the potential noise and general amenity impacts on local residents from any renewable energy project.

The turbine equipment to be located in the turbine house has the potential to generate noise. Information submitted with the application states that this can be minimised via design, and given the nearest dwelling would be 130 metres to the north west of the site, there will be no operational noise issues.

Having regard to the location of residential properties adjacent to the field where the proposed turbine house is to be located, Officers' opinion is that the imposition of a condition to ensure sound attenuation is put in place would provide adequate safeguards for occupiers of these properties. In combination with controls over construction phase operations, this would ensure the tests in the relevant planning policy, VOE 10 are met. It is not considered that the potential for noise arising from the turbine causing disturbance to fishermen would be a reasonable basis for opposing the development.

4.2.4 Ecology

The general requirement to consider the impact of development on biodiversity interests is set out in PPW Chapter 5, TAN 5 and LDP policy VOE 5. Specific to a hydro development is LDP policy VOE 10 which requires specific assessment / explanation of impact on biodiversity, and mitigation proposals. VOE 5 requires proposals which may have an effect on protected species or designated sites of nature conservation to be supported by a biodiversity statement having regard to the County biodiversity aspiration for conservation, enhancement, and restoration of habitats and species.

A Phase 1 Habitat Survey has been undertaken to cover amphibians, badgers, bats, birds and reptiles. The survey includes recommendations for mitigation and enhancements. A tree survey, tree constraints plan and tree protection plan has been submitted with the application. Eleven individual trees have been identified for removal to facilitate the development. The Council's Biodiversity Officer has considered the details and has advised that she is satisfied that the ecological surveys undertaken are suitable and commensurate with the development, and agrees with the conclusions, offering no objection, provided the recommended mitigation and enhancement measures are conditioned and followed. NRW have expressed a similar view. A felling licence has been obtained for the tree felling from NRW. As noted above, there are no objections from the Council's Tree Consultant. A number of concerns have been raised by private individuals over the adequacy of the ecological information with the application, and the potential impact on the fish population from the detailing of the proposals, including comments on the potential for noise from the turbine mechanism on migrating fish.

Officers' opinion, informed by the responses of consultees, is that there is adequate information on ecological interests to assess the impacts of the development. These indicate there are appropriate reasonable avoidance measures and mitigation proposed in relation to statutory protected species, which can be secured through the use of planning conditions. Providing the development works are undertaken in strict accordance with the recommendations, mitigation and avoidance measures identified in the Habitat Survey and Tree Survey, it is not considered there would be any unacceptable ecological impacts.

In relation to impacts on fishing interests, Officers understanding is that points raised by objectors in relation to salmon and sea trout movement and migration, breeding and river invertebrates, are considerations properly dealt with by NRW as part of their environmental permitting processes outside planning legislation, which include fish pass approval and abstraction licencing. Consequently, whilst respecting the concerns voiced over potential impacts on fish populations and fishing rights, in this context, it is not considered appropriate to attach weight to these matters as a factor in the determination of the planning application.

4.2.5 Flooding and water quality

Planning Policy Wales Section 13.2 identifies flood risk as a material consideration in planning and along with TAN 15 – Development and Flood Risk, provides a detailed framework within which risks arising from different sources of flooding should be assessed.

Members will note from the summary of representations that there are considerable objections lodged at the potential implications of the proposals on the River Elwy, in particular in respect of river flow, and flooding.

Factually, the site is within a C2 flood risk zone, located within the 1 in 1000 year flood outlines on the NRW indicative Flood Map. A Flood Consequences Assessment (FCA) has been submitted in support of the planning application. This acknowledges that the turbine house may be susceptible to flooding and indicates this will be built with flood resistant construction methods and techniques. NRW have confirmed that the contents of the FCA are generally commensurate to the type, nature and scale of the development and welcome the applicant's intention to incorporate flood proofing measures within the turbine house. NRW have also confirmed that Flood Defence Consent is required for the development as it is within 7 metres of the bank top of a main river, and an application for Flood Defence Consent has been granted for the development.

In respecting the grounds of concerns from objectors, on the basis of the NRW responses, Officers believe the flood risk issues relevant to the determination of the planning application have been given due consideration and that it is reasonable to accept the NRW conclusion that there are no additional flood risk impacts anticipated. With regard to suggestions for the imposition of a planning condition requiring a survey of the condition of the weir to determine the need for and carrying out of repairs, NRW have confirmed they have not requested the Local Planning Authority to attach such a condition on any permission.

4.2.6 Archaeology

The general requirement to consider the impact of development on archaeology and cultural heritage is set out in PPW Chapter 6.5, LDP policy VOE 10 and Welsh Office Circular 60/96 'Planning and the Historic Environment' which states the desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether than monument is scheduled or unscheduled (para 10). Specific to a hydro scheme, policy VOE 10 requires specific assessment / explanation of impact on cultural heritage.

The scheme is proposing to utilise the existing weir associated with the former Wigfair Isaf Mill. The weir dates to at least 1874 and CPAT advise that its origin may even be earlier. CPAT have suggested a pre-commencement condition is applied to ensure a pre-development survey of the site is carried out and a watching brief undertaken during building works, in accordance with the guidance set out in Circular 60/96 regarding the use of conditions to protect archaeological monuments.

Subject to the inclusion of a pre-commencement condition requiring a pre development survey, it is not considered there would be any adverse impact on archaeological features or cultural heritage.

Other matters

Members will appreciate that representations received raise a number of issues. The main land use planning ones are considered above.

In relation to concerns over the adequacy of the summary of representations and the absence of reference to individuals in the list of objectors, Officers have gone through the application file to ensure the list of objectors is accurate at the time of drafting the report. Any additional representations received between the completion of the report and the Committee meeting will be noted and summarised in the late information sheets. It is adopted practice to summarise representations and not to attach letters of representation to Committee reports. Officers believe the summary of representations in the redrafted report provides a fair outline of the main points raised in relation to the proposals.

Natural Resources Wales are responsible for a range of environmental licencing controls over the development of a hydro scheme which the County Council has no need to replicate, as

the County's role is to deal with land use planning matters and 'material planning considerations'. The applicants are keen that this distinction is made clearer to assist consideration of the application. In the context of this application, management of fish stocks, the migration of fish affecting the operation of the fishing rights, abstraction and discharge arrangements, and the design of a new fish pass are either controlled through licencing legislation administered by NRW or are not matters material to the land use planning merits of the application.

Representations on the application express a number of concerns over the neutrality / role of the NRW, and request that the Council should rectify alleged failings of NRW in the process. In respecting the comments made on the competence of the NRW, Officers can only repeat the basis of previous comments in the report and suggest it has to be recognised that NRW are the Government's main environmental agency involved in the planning process, and a key statutory consultee for all planning authorities, with levels of expertise on highly technical matters. The issues arising in relation to elements of the hydro scheme have been addressed in considerable detail, including by NRW in their response to consideration of the complaint from the Angling Association into their handling of the Abstraction Licence application, and it is not considered either appropriate or necessary for the Local Planning Authority to further challenge their competence in respect of matters raised in relation to their actions or their responses to the Council on matters relevant to the planning application. As stated previously, the deferral of the application has given opportunity for NRW to respond to complaints from the Angling Association, and NRW have confirmed their comments on the planning application remain valid.

In relation to suggestions on behalf of the Angling Association that the Council consider the imposition of specific planning conditions, NRW have confirmed they have not requested the Authority to include conditions requiring a survey of the condition of the weir to determine the need for repairs, or in relation to the detailing of the fish pool(s) required under the Abstraction Licence, in order to involve angling interests in the consultation process. On the latter situation, NRW confirm the applicant must comply with the conditions of the Abstraction Licence with regard to the re-design of the fish pool(s). NRW also advise they have not requested a condition be considered to ensure arrangements for a compensation payment from the developer to angling rights holders if there is a measurable impact on the quality and capital value of the fishery affected by the development. Following consultation with the Legal Officer, it is respectfully suggested that protection of private fishing rights is not a matter for consideration on a planning application, and a condition setting out a requirement for a developer to compensate a third party for loss of capital value of a fishery would not meet the requisite tests to be applied to the imposition of planning conditions on permissions.

It is not considered that it is reasonable or necessary to impose a requirement on the developer of a hydro scheme to enter into an undertaking / bond in relation to the construction, implementation, and maintenance of the development, and to cover contingencies if something goes wrong, in particular arising from concerns over the financial standing of the applicant company. Other hydro and wind power schemes consented by the Council have not included such requirements.

In terms of land ownership, the Applicants have advised that they have served notice on the land owner and are satisfied that that no further notices are required in connection with the planning application.

In relation to the maintenance, management and long term plans for the scheme, the Agents have advised that once the project is installed then it would not be decommissioned for the foreseeable future. North Wales Hydro Power would be ultimately responsible for the on-going maintenance of the scheme. There would be a webcam located on the side of the turbine house so as to allow the monitoring of debris build up and to monitor the operation of the fish pass and the hydroelectric scheme. If debris collects on the debris screen, which is inevitable, then it will be removed as appropriate depending on the size of the debris. The debris screen is before both the fish pass and the hydro turbine and therefore should debris collect the turbine will be impacted on first as the fish pass has priority over the turbine for

water flow. It is therefore considered that there is no more incentive required for removal of debris as the build-up of debris will mean the output of the turbine is reduced and the scheme is effectively losing revenue.

There will always be challenges to claims over Carbon reduction figures and efficiency figures on renewables schemes. Respectfully, this is not a determinant factor in the assessment of an application on this scale as there is general support for the contribution such schemes can make to the Government's renewables targets.

5. SUMMARY AND CONCLUSIONS:

5.1 The application proposes a small hydro electric scheme on the River Elwy in a location to the south of St Asaph.

5.2 The proposals have given rise to considerable local reaction and a range of issues have been raised. The report attempts to address these matters to assist Members deliberations.

5.3 The report concludes that the principle of the development is acceptable in relation to current planning policies and guidance, and that having regard to objections and consultee responses, the impact of the scheme would not be unacceptable, subject to suitable controls through planning conditions.

5.4 The type of development proposed is heavily regulated by legislation outside the Council's control, administered by Natural Resources Wales. A number of detailed matters raised by objectors are considerations to be applied by NRW as part of their consenting processes.

5.5 Officers' conclusion, with respect to local concerns, is that the proposal meets the relevant policy requirements and that subject to controls would not have unacceptable local impacts.

RECOMMENDATION: GRANT- subject to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
2. Written confirmation of the date of the first generation of electricity from the development shall be provided to the Local Planning Authority no later than 1 calendar month after the event.
3. The development shall be carried out in accordance with the details set out in the Extended Phase 1 Habitat Survey and the Reasonable Avoid Measures set out in the 'Conclusions and Recommendations' section of the report shall be implemented.
4. If protected species are found to be present at the site during construction, no further development shall be carried out until appropriate protection and mitigation measures are submitted and approved in writing by the Local Planning Authority, in consultation with Nature Resources Wales.
5. If nesting birds are found to be present during construction, no further development shall be carried out during the bird breeding season until secondary surveys have been carried out, and the results of the surveys together with reasonable avoidance measures to deal with the presence of nesting birds during the construction phase have been submitted to and approved in writing by the local planning authority.
6. The development shall be implemented in accordance with the approved construction method statement and any deviation from the method referred to in this statement shall be approved in writing by the Local Planning Authority.
7. **PRE--COMMENCEMENT**
No development shall be permitted to commence on the turbine house until the written approval of the Local Planning Authority has been obtained to the detailing of the sound attenuation measures to limit internally generated noise to an agreed level at the façade of any noise sensitive properties in the locality.

8. All electricity cables from the turbine house to the grid connection point shall be laid underground and no additional ancillary equipment such as substations or equipment cabinets shall be permitted without the prior written approval of the local planning authority.
9. If the development hereby permitted ceases to operate for a continuous period of not less than 12 months, within 6 months of that time, the turbine house and all other structures on or above the ground shall be dismantled, the materials removed from the site and the site restored to the satisfaction of the local planning authority.
10. **PRE-COMMENCEMENT CONDITION**
No development shall take place within the application site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved in writing by the archaeological curator for the Local Planning Authority. The archaeological programme of work will be undertaken and completed in accordance with the standards laid down by the Institute for Archaeologists and MoRPHE (2006). On completion appropriate reports and an archive assessment will be submitted for approval to the Local Planning Authority and the Development Control Archaeologist, Clwyd-Powys Archaeological Trust, 41 Broad Street, Welshpool, Powys, SY21 7RR. tel: 01938 553670.

The reason(s) for the condition(s) is(are):-

1. To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and for monitoring purposes.
3. In the interests of protecting biodiversity and to ensure the scheme will not be detrimental to the favourable conservation status of any protected species.
4. In the interests of protecting biodiversity and to ensure the scheme will not be detrimental to the favourable conservation status of any protected species.
5. In the interests of protecting biodiversity and to ensure no active nests have been built in within the work area or that may be disturbed by undertaking the works.
6. In the interests of protecting residential amenity.
7. In the interests of protecting residential amenity.
8. In the interests of visual amenity.
9. To ensure the long term reinstatement of the site, in the interests of landscape and visual amenity.
10. In the interests of archaeological recording.

NOTES TO APPLICANT:

You are advised that the grant of planning permission does not permit the development to proceed without the relevant permits / approvals from NATURAL RESOURCES WALES, and you should ensure all consents are obtained from NRW prior to the commencement of works on site.

NATURAL RESOURCES WALES advice:

River Elwy is a Main River. Under Water Resources Act 1991 and Land Drainage Byelaws, prior written consent from NRW is required for any proposed works or structures, in, under, over or within 7m of the top of the bank of a Main River.

The works should comply with the guidance contained in NRW PPG5: Works and maintenance in or near water: <http://publications.environment-agency.gov.uk/PDF/PMHO1107BNKG-E-E.pdf>

Any excavation material or building waste generated must be disposed of in accordance with section 34 of the Environmental Protection Act 1990.

Any activity of importing waste into the site must be registered as a permitted activity under the Environmental Permitting Regulations 2007.