



## Meeting note

<b>File reference</b>	EN010020
<b>Status</b>	<b>FINAL</b>
<b>Author</b>	Kate Mignano
<b>Date</b>	10 December 2013
<b>Meeting with</b>	Mynydd y Gwynt Ltd and Renewable Energy Holdings plc (the applicant)
<b>Venue</b>	Temple Quay House, Bristol
<b>Attendees</b>	<u>The Applicant</u> David Harries – Aaron & Partners Keith McKinney – Aaron & Partners Clive Callister – Director of Mynydd y Gwynt Ltd William Little – Environmental Consultant  <u>The Planning Inspectorate</u> Richard Price – Case Leader Simone Wilding – Head of Case Management Kate Mignano – Case Officer Justin John - Lawyer Laura Allen – Senior EIA and Land Rights Advisor Alison Down – EIA and Land Rights Advisor
<b>Meeting objectives</b>	Project update and advice from the Planning Inspectorate in relation to draft application documents
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) advised that under its openness policy a meeting note of the meeting would be taken and published on the National Infrastructure pages of the Planning Portal website; including any advice given under s51 of the Planning Act 2008 (the PA2008). It was also noted that any such advice would not constitute legal advice upon which the applicant (or others) could rely.

### Project Update

The applicant provided an overview of the project explaining how the proposal had developed over time. The project was originally prepared under s36 of the Electricity Act 1989.

The applicant explained that a small area of land, south of the main site off the A44, had been identified in some plans as forming part of the site. It was clarified that it will be within the Order limits and that all plans showing the site boundary will be

consistent in showing this. Whilst no works are currently planned within this area the developer wishes to retain it within the site boundary in the event that off highway works are required on the south side of the highway to facilitate access to the site.

It was noted that proposed off-site road improvements would not form part of the Development Consent Order (DCO) and would be subject to a separate agreement with Powys County Council and other relevant planning authorities under s278 of the Highways Act 1980.

### **Pre-Application Consultation**

The applicant provided an overview of its Pre-Application consultation and explained how it had been carried out in conjunction with the latest CLG guidance. It was noted that an early objection from the Ministry of Defence had been withdrawn after clarification that the area was not a low-fly zone. It was confirmed that most consultees have seen all the chapters of the draft Environmental Statement (ES).

The applicant stated it was confident that environmental surveys carried out between 2004 and 2011, including ecological studies, are robust. It explained that these had been updated, where appropriate in accordance with current guidance, to reflect the baseline; and that this had been discussed with key consultees.

In response to s42 consultation carried out in May 2013, Natural Resources Wales (NRW) did not raise any significant issues with the methodology of the ES.

### **Preparation of Application documents**

The Inspectorate advised that, where appropriate, it was preferable for information within documents submitted as part of the DCO application to be cross referenced as opposed to duplicated. It was noted that the detail identifying the location of specific works had not been populated in the draft DCO provided by the applicant in September 2013, and the Inspectorate asked if this information had been made available to consultees at Pre-Application. The applicant confirmed that details regarding the location of the works had been consulted upon through the draft ES.

The applicant confirmed that work was on-going finalising documents in preparation for submission of the DCO application; including compilation of the Consultation Report.

The applicant explained it had appended a Flood Risk Assessment (FRA) to the hydrology chapter of the ES; and asked if this was acceptable. The Inspectorate advised that this was acceptable where the ES sought to refer to and rely on the findings in the FRA. On the Application Form (Box 18) the applicant should also identify where in the ES the FRA has been provided; for example, appendix X, document reference Y.

The Inspectorate advised that all documents including the Application Form should be consistent and up-to-date. References to the IPC should be changed to the Planning Inspectorate and any other consultation bodies that have been abolished or re-named must be updated accordingly; for example, the Countryside Council for Wales is now NRW. If the applicant is proposing to secure any mitigation through a s106 agreement, draft heads of terms should be provided with the DCO application. The Inspectorate explained that, should the application be accepted for examination, any s106 agreement would need to have been finalised before the close of Examination to

allow the Examining Authority (ExA) to be satisfied that any proposed mitigation can be secured in this manner.

The Inspectorate drew attention to the following observations in relation to its review of the draft Application Form:

- Box 14(c) – the Inspectorate confirmed that the IPC as was, did not identify any Regulation 9(1)(c) bodies to the applicant under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (EIA Regulations);
- Box 16/17 – plan showing statutory protected sites / heritage sites – where such plans are provided within the ES, the applicant would need to identify on the Application Form where in the ES these plans were provided;
- Box 24 – ‘Other consents/licences’ – the applicant should list here any other consents or licences that it has identified are required, for example, for European Protected Species, or nationally protected species. Where such licences are required, the ExA (if the application is accepted for Examination) will expect to be provided with a copy of the licence application and a ‘letter of no impediment’ from the licensing body; for example, NRW.

### **Environmental Statement, Habitats Regulations Assessment (HRA) Report and the draft Development Consent Order**

The Inspectorate explained that a high-level review had been made following receipt of the draft ES, HRA and DCO, and offered the following advice applicable to all of these documents:

- The project description should be consistent across the ES, HRA and DCO; in particular where the description of the project is determined by the maximum number of turbines and/or generating capacity;
- The description of the works in the draft DCO (Schedule 1, Authorised Development) should match the works as shown on the Works Plan. To ensure that all required works have been identified both on the Works Plan and within the draft DCO, it is advisable for the Works Plan to identify against each separate work the Works Number against which it relates in the draft DCO;
- The Non-Technical Summary (NTS) identifies other development that will be required to deliver the overall scheme i.e. “*minor off-site road improvements... at junctions / pinch points and to extend or harden certain lay-bys*” (page 10, NTS). However, it is unclear how this other development has been considered and assessed in both the ES and HRA Report. The applicant will need to explain to the ExA (if the application is accepted for examination) how the overall scheme would be delivered, including any development which would be consented under a different planning regime, for example the TCPA 1990 (as amended); and how such related development has been considered and assessed within the ES and HRA Report within the ‘cumulative’ or ‘in combination’ assessment. The Inspectorate also noted that the proposed SP Manweb grid connection would not form part of the proposed DCO application for the wind farm. However, it was unclear whether this grid connection had been considered and assessed in both the ES and HRA Report. The Inspectorate expects the proposed grid connection to be considered within the cumulative and in combination assessment within the ES and HRA Report, respectively, and for a plan to be provided identifying the potential location of this grid connection;

- The applicant should be able to demonstrate that it can secure and deliver mitigation relied upon in both the ES and the HRA Report through the draft DCO, as only deliverable mitigation should be assessed. The applicant will need to identify the mechanism that will be used to deliver this mitigation. Where this mechanism is a plan, for example the Site Environmental Management Plan or Drainage Management Plan referred to in the draft NTS, it would assist the ExA, (should the application be accepted for examination) to be provided with a draft of this plan to understand how the mitigation would be delivered under the plan. To ensure that the mitigation relied upon in both the ES and the HRA Report is secured and delivered through the draft DCO, the Inspectorate suggested that the applicant produce a table to identify each mitigation measure relied upon in the ES and the HRA Report; including how it would be delivered (mechanism i.e. plan) and how this would be secured in the draft DCO (i.e. the draft requirement number);
- Consultation on the draft DCO, ES and HRA Report should be well documented; including how any comments received have been taken into account. Whilst the applicant may choose to document this consultation within the Consultation Report, the Inspectorate would find it helpful to assist the Acceptance determination if copies of consultation relating to the draft HRA could be appended to the HRA submitted with the DCO application; and
- Any documents referred to in the ES or HRA that are not easily publicly available should be appended to the ES or HRA.

#### Comments specific to the draft HRA:

- The draft HRA records that a 10km buffer was chosen to identify sites which may be affected by the proposed development. However, no justification is provided for selection of this distance. This should be clarified in the HRA, including whether it has been agreed with the relevant statutory nature conservation bodies (SNCB);
- The draft HRA Report identifies that within the 10km study area applied, three sites were identified: River Wye / Afon Gwy SAC; Elenydd Mallaen SPA; and Elenydd Mallaen SAC. Whilst Elenydd Mallaen SAC has been identified and therefore screened into the HRA, the draft HRA does not record what assessment has been undertaken and therefore it does not appear to have been assessed within the HRA. This should be clarified within the HRA and the assessment provided. It is also unclear whether there are any other sites within 10km which have been identified & excluded from the assessment by the applicant. This should also be clarified within the HRA, including whether it has been agreed with the relevant SNCB;
- The terminology within the draft HRA Report is confusing at times. It appears to confuse the HRA process (which involves all four stages of the overall assessment process) and the appropriate assessment process (stage 2 only); Tables 3 and 4 refer to 'adverse effects' when the test for Stage 1 in the HRA process is whether or not the proposed development is '*likely to have a significant effect on a European site*'; reference is made to 'cumulative' impacts when the test for Stage 1 in the HRA process is whether the project alone or '*in combination with other plans or projects*' will have a likely significant effect; reference is also made to it being 'extremely unlikely' that an effect will occur, again this does not reflect the terminology in the Habitats Regulations<sup>1</sup>. The applicant was advised to ensure that the wording used in the HRA Report

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations)

reflects the wording in the Habitats Regulations for the assessment being undertaken;

- In combination assessment – It is unclear whether the proposed SP Manweb grid connection has been considered in the in combination assessment. This should be assessed within the in combination assessment. The HRA Report should clearly identify the criteria used to identify the 'other plans and projects' and whether this has been discussed and agreed with the relevant SNCB. The applicant may wish to consider the criteria identified within The Planning Inspectorate's Advice Note 10: HRA<sup>2</sup> on page 8. The plans and projects which have been considered in the in combination assessment, including those which have been screened out and not taken forward into the assessment, should be listed in the HRA Report. A plan showing the location of these 'other plans and projects' relating to the proposed development should also be provided within the HRA Report. The potential for the proposed development to have a *'likely significant effect on a European site... (either alone or in combination with other plans and projects'* should be assessed for all European sites screened into the HRA process;
- The outcome of the HRA should be discussed both with the relevant SNCB and any other appropriate body, for example the Royal Society for the Protection of Birds. The outcome of these discussions should be recorded within the HRA Report, including whether or not agreement can be reached on the applicant's conclusion regarding whether or not the proposed development is likely to have a significant effect (either alone or in combination) on a European site. Where agreement cannot be reached between the applicant and the consultees, the HRA Report should record the reasons why and how the applicant intends to resolve any such disagreement. The applicant may also wish to document such discussions within a Statement of Common Ground, identifying both areas where the applicant and the consultees agree and disagree; and
- The HRA Report should also include the appropriate matrices, as provided within the latest version of PINS Advice Note 10: HRA, to record what stage in the HRA process the applicant's HRA has reached and to identify where information supporting this conclusion can be found in either the HRA Report or ES. These matrices should be provided both in PDF and Word format.

#### Comments specific to the draft DCO:

- Under Article 2 of the draft DCO the Inspectorate advised that exhaustive lists of interpretations/definitions should be provided in the appropriate Parts;
- The Inspectorate advised that, where appropriate, articles/requirements within the draft Order should make explicit to which element(s) of the authorised development (i.e. Works nos.) they would relate;
- Under Article 7 and in Schedule 1 the Inspectorate advised that the applicant revisit the provisions of the PA2008 in relation to types of NSIP and associated thresholds, and that consistent and appropriate wording was used;
- The Inspectorate advised that in relation to the Requirements within the DCO, the discharging body would not be the Planning Inspectorate. In most types of provisions it would usually be the local planning authority; and
- The Inspectorate emphasised that everything in the draft DCO should be thoroughly justified, and that the PA2008 provides very limited scope for material changes to projects after the point of application.

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<sup>2</sup> Available at: <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/09/Advice-note-10-HRA.pdf>

## **Acceptance Period**

The Inspectorate advised that during the Acceptance period there was no scope to contact the applicant and that it was therefore important to note that all documents submitted as part of the DCO application should be cross referenced accurately and unambiguously.

The Inspectorate explained that at the beginning of the Acceptance period the Consultation Report would be sent to the local authorities for them to prepare comments on the applicant's 'Adequacy of Consultation' within 14 days. It was also explained that the Acceptance Inspector may request consultation responses during the Acceptance period under Regulation 5 (5) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended); and that these responses should be collated in preparation for any such request, but not provided with the DCO application.

The Inspectorate drew attention to the Acceptance tests under s55 of the PA2008, and explained that once an Acceptance decision had been made, the s55 checklist would be published to the project webpage alongside any emerging s51 advice to the applicant.

### **Specific decisions / follow up required?**

- Applicant to send HRA Report to NRW;
- Applicant to provide the Inspectorate with firm date for submission of the DCO application at earliest possible opportunity;
- Applicant to provide fully populated draft DCO to the Inspectorate in good time in advance of formal submission.