



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: myg@pins.gsi.gov.uk

To all Interested Parties

Your Ref:

Our Ref: EN010020

Date: 2 April 2015

Dear Sir/Madam

**Planning Act 2008 (as amended) and The Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended) – Rule 17**

**Application by Mynydd y Gwynt Ltd for an Order Granting Development
Consent for the Mynydd y Gwynt Wind Farm**

Request for further information

In the light of the content of the written submissions received from the interested parties to date, I have decided to request that the relevant named parties provide further information in response to the attached questions in **Annex A**, which are put under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

Responses should be submitted by **Thursday 16 April 2015**.

Comments on submissions from the applicant and interested parties

I refer to my letter¹ dated 9 March 2015, regarding my decision² not to make a direction under rule 13(6) or 23 of the Infrastructure Planning (Examination Procedure) Rules 2010, pertaining to the applicant's letter dated 5 March 2015, which can be viewed on the National Infrastructure pages of the Planning Portal website:

<http://infrastructure.planningportal.gov.uk/document/3056050>

If any interested party wishes to comment on this 'Additional Submission', which I accepted into the Examination on Thursday 5 March 2015, I request that comments be received for **Deadline VII – Thursday 16 April 2015**.

I also consider that parties should be given the opportunity to comment on the submissions received for **Deadline VI (26 March 2015)**, which can be accessed via the following link:

http://infrastructure.planningportal.gov.uk/projects/wales/mynydd-y-gwynt-wind-farm/?ipcsection=docs&date_type=deadline&from=26-03-2015&to=26-03-2015

¹ Rule 9 letter to all interested parties- <http://infrastructure.planningportal.gov.uk/document/3055818>

² Rule 9 letter to applicant - <http://infrastructure.planningportal.gov.uk/document/3055948>

Any comments on any submissions received for **Deadline VI** should also be submitted to the Planning Inspectorate's case team by the deadline of **Thursday 16 April 2015**.

Please note that timely submissions in advance of set deadlines are encouraged to ensure an efficient, fair and smooth examination for all parties.

Yours faithfully

Philip Asquith

Philip Asquith
Examining Authority

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

The Examining Authority's request for further information put under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

NB – Questions are addressed to named interested parties but any party is welcome to comment regarding any question

Ref No.	Respondent:	Question:
Draft Development Consent Order (dDCO)		
Following the second Issue Specific Hearing on the dDCO on 19 March 2015 NRW has submitted its version of draft amendments to the dDCO (NRW Draft Amendments to Applicant's DCO draft 2). The majority of the following points refer to this version.		
1.0	dDCO - Articles (A)	
1.1	Applicant, NRW and any interested party	<p><i>A2 - definition of environmental statement</i></p> <p>i. 'The environmental statement'; should this be "means the document submitted with the application entitled Environmental Statement (references MYG-ES-1-18, MYG-ES-NTS-ENG and MYG-NTS-CYM, dated July 2014), with incorporated figures, and certified as the environmental statement by the Secretary of State for the purposes of the Order"?</p> <p><i>A2 – other definitions</i></p> <p>ii. The various plans added to A14 (CEMP, etc.) will need to be added to the list of definitions, by reference to the relevant requirement.</p>
1.2	Applicant, NRW and any interested party	<p><i>A3 – development consent</i></p> <p>Do these amendments add anything? Requirements are already defined by reference to Schedule 2, and the authorised development is already defined by reference to Schedule 1.</p>
1.3	Applicant, NRW and any interested party	<p><i>A6 - power to deviate</i></p> <p>The proposed restriction does not relate to deviations, but instead to the development generally, so is this the appropriate place for it? Should the peat management plan have its own requirement, along the lines of the wording proposed for A6(c)?</p>
1.4	Applicant, NRW and any interested party	<p><i>A7 – operation</i></p> <p>Are these changes necessary? "Hereby" is not recommended drafting (based on the Office of the Parliamentary Counsel Drafting Guidance, which is used for statutory instruments). Similarly, as the generating station limits are set in Schedule 1 do they need to be repeated here?</p>

Ref No.	Respondent:	Question:
1.5	Applicant, NRW and any interested party	<p>A11 – operational land</p> <ul style="list-style-type: none"> i. Making the land operational land does carry with it certain rights to carry out works from other regimes, so limiting those could be reasonable given that the DCO grants extensive maintenance powers (A5). ii. S33(1)(a) Planning Act 2008 makes it clear that planning permission is not required where development consent is required. A11 does not grant planning permission, but instead states that development consent is to be treated as specific planning permission for the purposes of s264(3)(a) TCPA. S264(3)(a) is part of the test for whether land is to be treated as operational land for the purposes of the TCPA. So, the consequence of A11 is not to deem planning permission for the development permitted by the DCO, but instead to treat the land as operational land. iii. So, with the above in mind, do some of the exclusions suggested need to be examined further? <ul style="list-style-type: none"> – S9(4)(d) Forestry Act 1976. This states that a licence to fell trees will not be required in relation "to any felling which...is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 or the enactments replaced by that Act, or under the Town and Country Planning (Scotland) Act 1997". As above, A11 does not grant planning permission or deem planning permission to be granted, outside the context of the test for operational land in s264(3)(a). In this context, why is this clause necessary? This is a matter for clarification by NRW. – The sections of the Countryside and Rights of Way Act 2000 (and NRW's comment on A11) relate to the exclusion of land from the definition of access land. While one of the paragraphs (paragraph 8) referred to relates to undertakings by statutory undertakers, it is not clear how this relates to s264(3). Also, the other paragraphs referred to seem to have little relationship to the development – for example, paragraph 7 applies to "Land used for the purposes of a golf course, racecourse or aerodrome". Can these matters be clarified? – Part of the permitted development rights applies to operational land so reference to the GPDO is relevant to s264(3)(a). However, of the proposed exclusions (a) to (f), only (f) ("any other development carried out in, on, over or under the operational

Ref No.	Respondent:	Question:
		<p><i>land of the undertaking</i>") relates to operational land and so is relevant to s264(3)(a). In this context can NRW explain why are (a) to (e) to be excluded?</p> <p>iv. Generally, the clause would need to be reworded to meet modern drafting standards. The sub-clauses should be lettered and the repeated text at the beginning of each sub-clause ("<i>treated (or have such effect) for the purposes of</i>", etc.) should be moved to before the colon at the start of the list.</p>
1.6	Applicant, NRW and any interested party	<p>A12 – trees Would the following wording be preferable? "(1) Subject to paragraph (5), the undertaker may fell or lop any tree or shrub within the order limits...", with a new paragraph (5) "Paragraph (1) does not apply to broad-leafed trees or to the hedgerow between..."</p>
1.7	Applicant, NRW and any interested party	<p>A14 – certification</p> <p>i. Is A14(d) necessary, as all the plans referred to are from the ES, which is already being certified in 14(e) (incorrectly shown as 14(d) currently, but if 14(d) is removed, this will be correct again)?</p> <p>ii. Are the amendments to A14(2) necessary?</p>
2.0	dDCO – Schedule 1	
2.1	Applicant, NRW and any interested party	<p>i. In the opening description, the limits of deviation are set by article 6 and so there is no need to repeat reference to them here. If the levels need to be set as well would this be better done either in article 6 or in the definition of the order limits?</p> <p>ii. In Works Nos 2 - 8, the reference should be to the Environmental Statement. Might it be simpler generally for the requirement for the development to be in accordance with the ES to be stated in the opening description rather than repeated throughout the DCO?</p> <p>iii. In Work No 4 "small" control building is vague and should be removed.</p> <p>iv. Work No 6 – the text needs to be clarified.</p> <p>v. The NRW suggested amendments include the deletion of Work No 9 referring to the settlement pond, reflecting the stated intention that this was not now to be included. The works plan would need to be updated to account for this. The HRASR will also consequentially need amending (see for example paragraph 145 in version 4 of the HRASR which refers to 'settlement ponds', and paragraph 18 and Table 1 on page 7 refer to a single pond). Reference is also made to ponds as mitigation in the River Wye SAC Matrix 1 evidence note and this cross-refers to the Surface Water Management Plan and Construction Environment Management Plan which would also need amending.</p>

Ref No.	Respondent:	Question:
		Might other documents also need amending in this regard?
3.0	dDCO – Requirements (R)	
3.1	Applicant, NRW and any interested party	<i>R1 - Definition of commencement</i> This needs to be re-worded for clarity, as "other than operations consisting of peat groundwork investigation" between "section 155 of the 2008 Act" and "and "commence"".
3.2	Applicant, NRW and any interested party	<i>R2 – Approval of details</i> "minor amendments" is not clear. Should the previous reference to materially different environmental effects remain?
3.3	Applicant, NRW and any interested party	<i>R3 – time limit</i> If the notice of commencement is required, the existing R3 should be made R3(1) and this requirement should be R3(2).
3.4	Applicant, NRW and any interested party	<i>R5 – decommissioning</i> i. The proposed R5(2)(a) and (b) should be "consultation with and the issue of written advice by Natural Resources Wales". NRW is not defined. ii. Should reference to the works plan be removed?
3.5	Applicant, NRW and any interested party	<i>R8 – CTMP</i> i. "reflecting" is vague - should it be "in accordance with"? ii. Should it be "subject to prior consultation with and the issue of written advice by Natural Resources Wales", if this is considered to be reasonable? iii. The proposed amendment to (k) is not clear.
3.6	Applicant, NRW and any interested party	<i>R9 – CEMP</i> i. The proposed wording should be similar to point (ii) for R8 above, if this is considered to be reasonable. ii. "and" after (r) needs to be moved to after (s).
3.7	Applicant, NRW and any interested party	<i>R14 – Habitat management</i> The wording should be similar to point (ii) of R8, above.
3.8	Applicant, NRW and any interested party	<i>R15 protected species</i> The definition should be "nationally protected species", not "national protected", and requires completion.
3.9	Applicant, NRW and any interested party	<i>R16 – Access management plan</i> The wording should be similar to point (ii) of R8, above.

Ref No.	Respondent:	Question:
3.10	Applicant, NRW and any interested party	<i>R17 – Bat protection</i> Should this be worded as per R16: (1) no commencement until there is a plan; (2) the plan is to include.... and (3) the plan must be implemented? Should it also use the wording “authorised development is to commence”?
3.11	Applicant, NRW and any interested party	<i>R27 – surface water</i> As per first two points of R8 above – “reflecting” is vague and the requirement needs re-wording?
4.0	dDCO -General	
4.1	Applicant	If amendments are to be made to the dDCO along the lines of the suggestions and areas of agreement as set out in the Powys County Council written summary of oral case made at the dDCO ISH, wording should be included in an updated draft by Deadline VII.
5.0	Other Matters	
5.1	Applicant	In its summary of oral case in respect of the ISH dealing with cultural heritage, Powys County Council is critical of MYG’s cumulative assessment relating to cultural assets. It suggests that this assessment is inadequate and fails to provide sufficient evidence to determine whether cumulative effects would occur, listing what it considers to be shortcomings and omissions (paragraph 3.2). Can the applicant please comment and/or provide further information/evidence to address the points raised?
5.2	Applicant	At the ISH on the dDCO on 19 March the ExA referred the applicant to paragraph 4.1.9 of NPS EN-1, which refers to the financial viability and technical feasibility of a proposal. In response, the applicant has provided a note on financial viability. This relates primarily to the predicted net capacity factor of the proposal. With the application there is little detail of the nature and standing of the applicant other than the fact that Mynydd yGwynt Ltd is a company set up for the specific purpose of promoting a wind farm by the landowners and local businessmen and operates in collaboration with Renewable Energy Holdings plc, a renewable energy developer (Environmental Statement, Chapter 1 and the Non-Technical Summary). Is there any further information the applicant wishes to provide to support the contention that the financial viability of the project has been properly assessed?