



Mynydd y Gwynt Windfarm

Planning Inspectorate EN: 10020

Natural Resources Wales

Response to ExA's Request for Further  
Information

and

Comments on Responses provided at  
Deadline VI - 26 March 2015

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## Request for Further Information

The ExA requested further information in a Rule 17 letter dated 2 April 2015. Our response to this request are set out below and are numbered as in Annex A of the ExA's request.

1.1 i) Yes.

ii) Correct.

The current list of plans are as follows:

“the Construction Traffic Management Plan” as referred to in Requirement 8 and which is drafted (MYG-AD-TMP) but not complete

“the Construction Environmental Management Plan” as referred to in Requirement 9 and which is drafted (MYN-ES-APP-6.1) but not complete

“the Habitat Management Plan” as referred to in Requirement 14 and which is drafted (MYN-ES-APP-11.21) but not complete.

“the Species Protection Plan ” Requirement 15 refers to a Species Protection Scheme rather than a Plan. There is no currently agreed draft of this plan.

“the Access Management Plan” means the Access Management Plan as referred to in Requirement 16 . There is no draft version of this plan.

“the Bat Protection Plan” means the Bat Protection Plan as referred to in Requirement 17. There is no draft version of this plan.

“the Surface Water Management Plan” means the draft Surface Water Management Plan as referred to in Requirement 27 and not complete (ref MYN-ES-APP-14.3)

Note that there is also a draft “the Surface Water Monitoring Plan” which is not referenced in any of the requirements but which is being discussed between the Applicant and NRW. It provides for mitigation referred to within the HRASR and we suggest this is referenced within requirement 9 (CEMP).

Note that the Hafren Management Plan should be deleted from the DCO as a plan needing to be defined.

1.2 The proposed refinement brings the draft Order terms into line with the former model terms previously considered acceptable to the Secretary of State.

1.3 The proposed saving is to bring the Order terms into line with the Peat Management Plan which has assumed a fixed development but the PMP assessment is itself in tension or conflict with the Order which assumes a flexible development. NRW would be content with a Requirement concerning peat, subject to accurate surveys being executed before close of the hearing on 20th May 2015.

1.4 Whilst NRW is concerned to ensure the scope of the purpose of the Order remains tightly drafted, NRW is content as to “Hereby”. NRW refers the Ex A to the explanatory comment by NRW and further notes that, where proposed amendment is to ensure that the disparate elements that make up the proposal remain bound together as only authorised to operate in aggregate for the purpose sought by the DCO application. For example, in the event that the Applicant were to implement the DCO by erection of a single turbine (as the Requirement definitions appear to contemplate), the beneficiary would not be then entitled to operate that single turbine unless and until a balance of

turbines had been erected to provide the actual range of megawattage shown. Further, and for example, the Applicant has indicated an increased range of capacity (from 38 % to now 33-38%) of each turbine which may result in changed turbine numbers. The proposed amendment ensure that, in circumstances where actual turbine numbers are not guaranteed to be built, nor too can the generating station be actually operated pending completion of sufficient numbers of turbines to reach and remains within the NSIP category for this generating station.

## 1.5 Operational Land

i) NRW agrees;

ii) NRW agrees. However, the Applicant seeks under Article 11 for the draft DCO to be treated as a specific planning permission for the purposes of section 264(3)(a), TCPA 1990. Therefore, the Applicant seeks to satisfy the test via the DCO so that it's authorised development "would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking". This being so, section 263 becomes satisfied because section 264(2) is excluded from being engaged. Section 263(1) defines "operational land".

Section 262 define "statutory undertakers" to include (6) any holder of a licence under section 6 of the Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking (a) for the purposes of the provisions mentioned in subsection (7)(a), if he holds a licence under subsection (1) of that section.

Section 6(1), Electricity Act 1989 provides: [Emphasis added]

(1) The Authority may grant any of the following licences—

(a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given ("a generation licence");

(b) a licence authorising a person to participate in the transmission of electricity for that purpose ('a transmission licence');

In order to generate electricity for transmission, wind turbine farms apply for licences under section 6(1)9a) of the 1989 Act. See attached random example (**Appendix 1**). Assuming that the beneficiary of the proposed DCO will seek to generate electricity, it is inevitable that it must have a section 6(1)(a) licence. At that point, it is also inevitable that, coupled with the proposed terms of the DCO, it will satisfy the TCPA 1990 definition of "statutory undertaker". In consequence, the subsisting permitted development rights ensuring in the land will be crystallised and available for the benefit of the totality of the Authorised Development redline area.

By sections 59 and 60, TCPA 1990, planning permission may be granted by development order. The TCPA General Permitted Development Order 1995, Article 3(1) (Wales) states:

Subject to the provisions of this Order and regulations 60 to 63 of the Conservation (Natural Habitats, &c.) Regulations 1994 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

Schedule 2, Part 17 provides for Development by Statutory Undertakers.

Part G provides: [Emphasis added]

Development by statutory undertakers for the generation, transmission or supply of electricity for the purposes of their undertaking consisting of—

(a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;

(b) [the installation or replacement of any electronic communications line which connects any part of an electric line to any electrical plant or building, and the installation or replacement of any support for any such line;] 1

(c) the sinking of boreholes to ascertain the nature of the subsoil and the installation of any plant or machinery reasonably necessary in connection with such boreholes;

(d) the extension or alteration of buildings on operational land;

(e) the erection on operational land of the undertaking or a building solely for the protection of plant or machinery;

(f) any other development carried out in, on, over or under the operational land of the undertaking.

Evidently, the scope of “any other development carried out in, on over, or under the operational land of the undertaking” is, in these circumstances, broad.

It is difficult to see how such a planning permission which may reasonably be anticipated as being engaged by a necessary precondition to actual generation of electricity by this proposal for Authorised Development could not then satisfy the Forestry Act 1976 provisions identified.

Similarly, how this exclusionary provision of CROW could not be satisfied.

iii) Part G, paragraphs (a) to (e) concern built development anywhere within the area of the red line of the DCO. This is a very extensive area, includes large areas of peat, and also contains large areas directly accessible currently under CROW without physical impediment of any nature.

iv) NRW agrees. NRW invites the Applicant to bring its draft terms into line with the intended operation of the proposed Order and adequately safeguard the ongoing application of the 1976 and 2000 Acts.

1.6 NRW agrees.

1.7 NRW considers that the approach to specifying the plans ensures: i) the Ex A has the relevant and most recent versions of the Management type plans before it in the hearing so that; ii) the Ex A can properly consider the likely decisions of future decision takers executing their discretions under the Requirements. Similarly, the Secretary of State in due course. Further, the nature of the application reflects the Rochdale Envelope approach and, to like consequence in (i) and (ii) above, the inclusion of the relevant plans properly identifies in the DCO terms the parameters for the operational development proposed. Conversely, if these items are omitted, it is difficult to see how the DCO beneficiary in due course will not become entitled to rely on the unfettered nature of the Works definitions. See the Polhill Garden Centre case (in the TCPA 1990 sphere) (**Appendix 2**): [Emphasis added]

I agree with Mr Dinkin that there is no ambiguity. Mr Mould's real complaint is that there is no condition relating to reserved matters for the design of external appearance of the store (save for colour and texture of the materials), but in my judgment that is not an ambiguity. It has been trite law, specially in the early days following the inception of the modern planning legislation in 1948, when reserved matters conditions were not imposed upon permissions as commonly as nowadays, that if detailed drawings did not form part of the permission and the Planning Authority omitted to

impose a reserved matters condition, the developer could construct the building in whatever dimensions and design he chose. Such a condition is normally imposed nowadays as a matter of form but that was not done here in the case of the store, despite the fact that full drawings had been produced and permitted in respect of the remaining part of the permitted development...

Unless it is made to form part of the permission in one of the ways I have described, the developer is not “stuck” with it when he or his successor comes to implement the permission or a later phase of it, maybe years later, and maybe after realisation that there can be an improved implementation of the same permission.

Here, absent the plans identified, the later omission of proper parameters today within which the development may be executed appears able to subsequently justify very different development from that which may today contemplated or assessed and with potentially quite different environmental consequences and impacts, including for the accessing public.

ii) NRW submits that the narrowing of the provision is necessary so as to ensure that the ES information does not operate to satisfy section 191, TCPA 1990 in relation to the scope of the asserted use of land for rallying within the redline area, and, in consequence engage the exclusionary provisions of CROW and thereby exclude the public from the land recently certified as open access.

2.1 i) NRW submits that the levels (vertical) be set by reference to gps AOD datum by addition of a column for vertical element at the base of each identified wind turbine and for each Works Number.

ii) NRW submits that the ES addresses broader development than the DCO provides for. Confusion may result as to what is permitted if the definitions are not tightly drawn. This is a consequence of seeking to include an ES in a Rochdale Envelope-type of DCO.

iii) NRW agrees but submits that some parameter be provided to avoid the Polhill consequences identified above.

iv) NRW’s concern is to clarify the awkward description of the work so that it is clear that there is an open area of hardstanding on which stands a building and a fence around the hardstanding. NRW has referred to particular plans in the ES showing these works. NRW invites the Applicant to better define its proposal.

v) NRW agrees to the deletion of Works no 9 as previously stated. There are a number of other settlement ponds already existing on the application site, in addition to this previously proposed new pond. The HRASR, CEMP and Surface Water Management Plan are referring to these existing ponds in addition to the previous Works No 9 but it should be clarified in these plans which ponds are required to provide the necessary mitigation.

3.1 NRW notes this and will revert shortly.

3.2 NRW is concerned to limit the scope of subsequent changes to a situation outside of the project that was actually subject to assessment. “Minor amendment” is adequately clear. Alternatively, “detailed amendments” may be used.

3.3 NRW agrees.

3.4 i) NRW notes this and agrees. ‘NRW’ is the acronym for the entity “Natural Resource Body for Wales.”

ii) NRW agrees.

- 3.5 i) NRW agrees.
  - ii) NRW agrees.
  - iii) NRW notes this and will revert shortly.
- 3.6 i) NRW agrees.
  - ii) NRW agrees.
- 3.7 NRW agrees.
- 3.8 NRW notes this, agrees and will revert shortly.
- 3.9 NRW agrees.
- 3.10 NRW agrees to both comments.
- 3.11 NRW notes this and will revert shortly.

## Landscape and Visual Amenity

1. The further submission of NRW on this topic is provided by Simon White (**Appendix 3**).
2. NRW notes that the Applicant has submitted a letter sent by the Countryside Council for Wales (CCW) in January 2011 with regard to the proposed Nant y Moch windfarm. NRW may make further submissions on this point in due course.

## Cultural Heritage

3. The further submission of NRW on this topic is provided by Richard Kelly of Govannon Consultancy.
4. *Paragraph 5:*  
The applicant states that they welcome the fact that both NRW and PCC accept that visual effects on heritage assets can differ from LVIA effects at the same location owing to different receptors being assessed (our emphasis).

However, that there may be a difference by reason of different receptors does not mean that the effects should be different in *all* cases and under *all* circumstances; there may be some that are different, and some that are not. In the particular case of the Pumlumon Summit Cairns, I consider the effects of the proposal would be on *a par with* the effects when gauged at the same LVIA Viewpoint and which is within the relevant registered historic landscape.

5. *Paragraph 6:*  
I have not in fact adopted an approach of 'directly mapping across the degree of change caused by the scheme to landscape and views to the extent of harm experienced by an asset due to change in its setting'. It should be obvious that each case, or asset, is considered on its merits, with any disparities noted, as in fact was so considered in this particular case.

With regard to the underscoring of impacts in ASIDOHL2 assessments, I would refer again to the Welsh Government's letter of 18 December 2014 to the ExA, which acknowledges that "turbines may have a wide visual impact but because of the small ground area physically impacted by the turbine itself, the ASIDOHL methodology may occasionally provide a result showing the development to have only a local impact."

My evaluation of impact scores in ASIDOHL2 assessments not only takes this into account, but also takes account of the fact that the turbines would be visible from parts of the historic landscape generally, and also from parts of its constituent Historic Landscape Character Areas, as well as from the heritage assets themselves. This approach is the correct approach and stems directly from the express principle underpinning the Register, which I read out in my evidence at the ISH on 18th March 2015. I would also add that the evaluation of impact scores in every case is determined by professional consensus, between myself and Govannon's senior partner, Dr David Gwyn. The evaluation was and remains robust.

6. *Paragraph 7:*  
As will be self-evident to the visitor of the summit area of Pumlumon, and is so to myself, I consider that it is a matter of 'common sense' that at the Pumlumon Summit Cairns and the equivalent LVIA Viewpoint, the visual *effects* would be the same, given in this particular case the substantial contribution the setting of the monuments makes to their significance: a setting that has *not* greatly changed since the cairns were first built a very considerable time ago and a setting that the original

builders of the cairns would still be able to recognise today, a setting in which views to and from neighbouring cairns and distant horizons would have been important originally as well as to any visitor seeking out the sites today, and, furthermore, a setting which later became recognised and imbued with the legends of the Mabinogion.

7. *Paragraph 14:*

I disagree with the presumption that the proposal would not harm any significance that the Pumlumon Cairns (and others on the ridge) derive from the presence of commanding views as these commanding views would in themselves remain available. Such an approach avoids grappling with the actual presence within such commanding views of proposed turbines as dynamic moving objects in a largely static ground landscape where dynamism is generated by the sky conditions and not by the ground conditions. The views would be disrupted and most substantially harmed below the skyline, by the presence in these views of the highly prominent moving forms of the turbine blades that would appear as large scale rotating cartwheel dynamic features within as much as 30 deg. of the angle of the view from Pumlumon summit. The absence of their synchronisation would reinforce the jarring and eye-catching movement of turbines in the still views.

8. *Paragraph 18:*

I consider that setting is a key aspect from which the Pumlumon Summit and the other ridge cairns *derive* their significance, and certainly equal to the evidential and historical values associated with their physical remains. It is for this reason that setting is important here.

*Comments on written summary of oral case at ISH on behalf of the Applicant*

9. *Paragraph 41:* The Javelin Park decision did not involve a Registered Historic Landscape, and I would refer the ExA, so far as relevant to this DCO process, to a recent decision to refuse an appeal to build three wind-turbines at Bedlinog farm, Bedlinog, Merthyr Tydfil, within the Gelli-gaer Common landscape of special historic interest and overlooking a group of Scheduled Bronze Age cairns within the Registered landscape: (**Appendix 4**). The Inspector concerned concluded that: 'the proposed development would be significantly harmful to the setting of an extensive part of the Registered Gelli-Gaer Common Historic Landscape Area and an important network of scheduled ancient monuments.'

10. *Paragraph 48:* The Applicant misrepresents NRW's case here and this demonstrates the Applicant's failure to grapple with the relevant issue. It is the degree and extent to which the proposal is visible, rather than whether it is *visible or not*, is how I, NRW (or its landscape professional) assesses the degree of harm, or otherwise caused. There is also the movement of the blades (their overlapping, out of kilter rotation, and size in such close proximity to Pumlumon to consider, adding to the proposal's visual effects.

The fact that there were other wind farms in existence when the Register was issued cannot be taken as *supporting* the current proposal. The schemes mentioned were planned *before* the Register was published, when it was not in the public domain and had no status as a planning document. Furthermore, CCW at the time did not have a structured system to assess the impacts of development on historic landscapes (the ASIDOHL methodology did not appear until 2003), so it would have been impossible to assess the impact of these schemes, harmful or otherwise, on the historic landscape in any meaningful way at the time. The presence of the existing wind farms does not mean that one should necessarily add to their impact on the historic landscape with the current proposal.

11. The proposal would cause substantial harm to the settings of the Pumlumon Summit and to other cairns. These settings make a substantial contribution to the monuments' significance; settings that have not greatly changed since the monuments were built and in which views to and from neighbouring cairns and distant horizons would have been important originally as well as to any visitor seeking out the sites today. Furthermore, the proposal would significantly and adversely impact on the cultural heritage of Wales if a large wind farm is built within sight of one its premier mountains and significant locus in the Mabinogion Tales.

#### **Habitats Regulations Assessment Screening Report**

12. A revised Habitats Regulations Screening Report (HRASR) was submitted for Deadline VI with the latest amendments highlighted within the document. Our comments on these revisions are provided below for the River Wye SAC and Elenydd Mallaen SPA. We note that a number of NRW's previous comments on the HRASR remain outstanding and our comments below require further collation of information. Given the time remaining within the Examination period we would suggest the Applicant needs to complete this further collation and analysis to ensure there is sufficient information to inform the HRA.

#### **Ecology - River Wye SAC**

13. The Applicant outlines the measures in para 64 of its Written Summary of Oral Case to conclude no likely significant effect on the River Wye SAC alone or in-combination.
14. The ExA needs to be satisfied that the proposed S106 would be an appropriate mechanism for securing the measures outlined in para 64iii as NRW consider these measures are necessary to ensure no adverse effect on site integrity.
15. Para 64ii states that no turbines or hardstanding will be within 50m of any watercourse. NRW considers this mitigation is necessary for concluding no adverse effect on integrity but it appears to remain unsecured within the dDCO or proposed S106. The dDCO allows for infrastructure to be moved anywhere within the Limits of Deviation but contains no restriction to ensure infrastructure is more than 50m from watercourses.
16. We note that the HRASR and the ES state no rallying will occur during the construction phase whereas the S106 is providing for no rallying to occur on the existing tracks to the east of the Wye Valley Walk (our emphasis). The Applicant therefore needs to clarify this discrepancy or amend the HRASR to ensure it is consistent with the S106.
17. The revised HRASR (page 51) states that the measures to avoid pollution rising from the existing 9.5km of roads to be used from the windfarm will ensure that there is a reduction of sediment loads emanating from the site. We welcome these measures but the HRA will need to consider that the existing 20km of roads and other infrastructure on the site which are not part of the windfarm infrastructure will not have mitigation applied so the baseline sediment loads may still be a matter of concern.
18. The in-combination assessment has been updated to include the Bryn Blaen and Neuadd Goch windfarms. Some remaining projects within the Wye catchment remain omitted from the list of in-combination projects including the Llandinam 132kV line and Bryn Blaen grid connection.
19. NRW's position remains at this time that there is likely to be a significant effect on the River Wye SAC. It should be possible for mitigation to be secured in the DCO to ensure there would be no adverse effect on the integrity of the site alone or in-combination. However there remains

uncertainty regarding a number of matters with regard to the design of the scheme and how mitigation will be secured.

### Ecology - Elenydd Mallaen SPA

20. NRW wish to clarify that we have not unreasonably withheld information on the nesting locations of red kite in the vicinity of the Mynydd y Gwynt windfarm (Para 70, Mynydd y Gwynt Written Summary of Oral Case at ISH, 26 March 2015). The data to which we have previously referred is owned by the Red Kite Trust and we have suggested that the Applicant *purchases* the data from the Trust in the same way that other windfarm developers have done. Whether the Applicant chooses to purchase that data for its DCO application is a matter for the Applicant. In the absence of such an agreement between the Applicant and the Trust, NRW is unable to provide the Applicant with commercial data owned by a third party. We have however agreed to provide the Applicant with information on the numbers of nests in defined areas around the SPA following a letter from them dated 9 April 2015 requesting this information and informing us that the Red Kite Trust has refused to provide them with the data. Such a refusal is a matter between the Trust and the Applicant alone.
21. NRW has *not* stated that all the birds observed on the application site originate from the SPA (para 71 and 77 Mynydd y Gwynt Written Summary of Oral Case). Rather it is the case that in the *absence* of any survey data to the contrary it cannot be shown that the birds do not originate from the SPA. The Applicant has provided a 2014 nest survey to show no red kites are nesting within 2km of the site boundary and the data from the Red Kite Trust has one known nest within 3-4km of the application site and a further 7 known nest locations within the 4-6km distance (we have no information on the date of these records and whether they all originate from one year). The nest in the 2-4km distance band is over 3km from the eastern boundary of the application site and over 4km from the centre of the site, the nests in the 4-6km distance band would be over 6km from the centre of the site. Para 76 of the Applicants submission states *'it is extremely unlikely that in this area, Red Kite would fly 6km to the application site when there is an abundance of intervening foraging habitat. Red Kite are generalist feeders, and will feed on invertebrates and carrion; most forage within 1 km of the breeding area because outside of their home territory they would be competing against individuals who derive from much closer breeding populations'*. The Applicant's own surveys have shown that there are no nests within 2km of the application site. The known nest locations from the Red Kite Trust data suggest that if it is these birds using the site then are travelling about 6km to forage in the centre of the site. Alternatively there may be further unknown nests to the north-west of the site which are nearer but NRW is not aware of any data to demonstrate if this is the case or not. Therefore there is no certainty regarding the origin of red kites using the site in the breeding season and their connectivity to the SPA as no data has been collected by the Applicant to demonstrate this.
22. The Applicant does not consider the non-breeding season when red kite are thought to forage up to 10km from roosting locations (SNH 2011<sup>1</sup>) which in this case are unknown. **Appendix 5** shows the SPA with a buffer of 2km, 4km, 6km and 10km distances and the position of the windfarm and its proposed grid connections in relation to these distances.
23. NRW accept that the Elenydd Mallaen SPA is a large site of some 30,000 hectares (para 73 of the Applicant's submission). It is *not* the case however that, because a project affects only a small

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<sup>1</sup> Literature review to assess bird species connectivity to Special Protection Areas, Commissioned Report No 390. SNH 2011

proportion of a European site, this can be directly translated into *no* likely significant effect or *no* adverse effect on site integrity. Consideration is required of the distribution of features, their conservation objectives and the ecological function of the area potentially affected and the Applicant's approach appears to misunderstand the correct approach to consideration of these matters. The Applicant states that less than 3.5% of the SPA and its 2km 'buffer' for red kite is within 6km of the nearest turbine but this equates to just over 1000 hectares.

24. Despite previous clarification from NRW the Applicant nevertheless continues to state that the population of red kite is declining in the SPA (para 78 Written Summary of Oral Case). This point has been dealt with previously by NRW (para 82 NRW Submissions for Deadline VI).
25. NRW's position remains that, given the difficulty of demonstrating that no birds originate from the SPA, it should be assumed they may be connected to the SPA. This is line with the precautionary principle inherent within the Habitats Regulations Assessment process. The assessment should then assess whether the likely mortality rates alone or in-combination with other projects including the grid line and other proposed windfarms are likely to affect the population of red kites for which the SPA is designated. The assessment could be undertaken using a number of assumptions regarding the proportion of birds using the site likely to originate from the SPA.
26. The recently received revised in-combination assessment in the HRSRSR V4 now considers a number of other projects and concludes no likely significant effect in-combination because the other windfarms are further from the SPA and the three operational windfarms have had no effects on red kites. NRW cannot agree with this rationale because there has been no monitoring of the effects of the existing windfarms and risk of collision is likely to be primarily determined by numbers of red kites using an area which is not necessarily directly correlated with distance from the SPA. The in-combination assessment should proceed using the information in the ES for the various projects with regard to likely collision risks.

### **Ecology - Peat**

27. The Applicant submitted a revised Peat Management Plan on 26 March in its Comments on Responses to the ExA's Second Round of Questions. The revisions comprise a brief assessment of the likely extent of drainage impacts on peat and peatland vegetation from infrastructure and the potential impacts on peat from cable trenches. NRW has previously commented on the Peat Management Plan and these further comments should be read in conjunction with Para 69-80, NRW Submissions for Deadline VI, 26 March 2015.
28. The Applicant's assessment of the likely extent of peat drainage impacts is surprisingly rudimentary given that its outputs provide inputs into the Carbon Calculation and carbon savings are required to be maximised by EN-3, paragraph 2.7.32 and 2.7.37. The peat assessment is based on unquantified observations of changes in vegetation along existing roads at the site. Potential issues with this approach are:
  - No information is provided of where these observations were collected including the depth of peat and the impacted habitat.
  - There is no information of the scale and method by which vegetation changes were recorded. For example, whether the observations were based on a cursory visual check of changes in dominant vegetation types or could detect small scale changes in species composition and cover.
  - It is assumed that changes to the vegetation equate directly to the change in water table and any resulting changes in the carbon balance.

The conclusion from these observations is that the expected extent of drainage is likely to be 3m with a potential maximum extent of 10m.

29. The Applicant has previously stated that the peat assessment in the ES has been undertaken in accordance with CCW guidance (2010)<sup>2</sup>. Table 4.6 of this guidance provides advice on the likely scope of an assessment of hydro-ecological impacts on windfarm infrastructure on peat (**Appendix 6**). This advice in Table 4.6 contrasts with the assessment undertaken by the Applicant where an undefined number of locations on the site have been visited and the extent of drainage is based on no more than a visual check of changes to vegetation. The CCW guidance also states '*the confidence attached to hydroecological impact assessments will depend to a large degree on the effort invested in site investigation*'. Given the nature of the Applicant's investigation we suggest little confidence should be attached to it and the assessment should proceed on the basis of a worse-case scenario with regard to the drainage extent.
30. The Applicant has compared their peat management plan with those undertaken for three other windfarms in Wales. The use of the comparables itself reveals the significant difference (and flawed) approach of the Applicant to assessing peat volume in this DCO, and how very different results arise from a theoretical assumptive approach as opposed to an approach based on actual relevant survey data. The 3m drainage extent assumed by the Applicant contrasts within the 10m assumed in the assessments for the Carnedd Wen and Clocaenog windfarms. The Llanbrynmair windfarm undertook a detailed assessment of the extent of drainage for specific items of infrastructure and this resulted for turbines in a calculated distance of 30-64m actually impacted by water table drawdown in the peat. The Applicant has therefore used a minimal drainage extent without undertaking any detailed assessment to justify this estimate and also appears to have excluded from its assessment the fact of the draft DCO's provision for limits of deviation and instead assumed (incorrectly) that the measurements for peat derive from a fixed (not a dynamic) turbine position layout. If one is to move the turbines from their illustrated position to a different position in the limits of deviation, it cannot be said that the peat depth in that changed location for each turbine is the same as that stated in the peat plan table 1. Therefore, the peat plan table 1 is inherently unreliable as a gauge of peat (and, in turn, of assessing carbon saving maximisation). Conversely, this may be resolvable to a degree if the limits of deviation were excluded from the draft DCO in a further draft and further survey work done around the (now properly fixed) turbine situations shown.
31. The Peat Management Plan having estimated a likely drainage extent does not use this to calculate the volume of peat to be affected by the project and this still remains an unknown. We assume that in part this is because there is insufficient peat depth data to allow the Applicant to estimate this with any reasonable degree of accuracy. We note that this estimate is included in the Peat Management Plan for the Clocaenog and Llanbrynmair windfarms.
32. The Applicant remains of the view that the worse-case scenario has been considered in the ES. It is suggested by the Applicant that if a turbine was to be micro-sited then it would only be moved to an area of equivalent or lower peat thickness. NRW remains uncertain as how this will be achieved given:
  - the need at some locations to micro-site for a number of parameters;
  - insufficient peat depth to inform these micro-siting decisions and to demonstrate that there are areas to which infrastructure could be moved to achieve this aim;

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<sup>2</sup> Assessing the Impact of Windfarm Developments on Peatland, CCW (2010)

- this mitigation not appearing to be secured in the dDCO.
33. The Applicant quotes from NRW's Written Representation of 18 December 2014 which is prior to the submission of the Peat Management Plan. It is now apparent that the worst-case scenario has not been considered at all within the Peat Management Plan as outlined in our previous submission. This is not in line with the PINS guidance on use of the Rochdale Envelope for a DCO proposal but no justification has been advanced for an exception to this guidance here. Furthermore, the PMP cannot therefore demonstrate (as evidence) that disturbance to peat has been minimised nor, in turn, carbon savings maximised.

### **Ecology - Bats**

34. The Applicant states that it is content to agree to NRW's proposed requirement with regard to bats as provided in our written representation of 18 December 2014 and our submission of 26 March.
35. The Applicant expresses surprise in its submission of 26 March that NRW requires further measures, which in summary require the micrositing of turbines away from high risk locations for bats. However these concerns were raised in NRW's written representation of 18 December 2014. A letter sent to the Applicant by NRW dated 24 February 2015 repeats these concerns (**Appendix 7**). As stated previously by NRW the Applicant appears to have accepted the need to address the matter in their Deadline III submission when they said they would be willing to accept a requirement in the DCO to ensure turbines are microsited away from forestry edges (Para 5.44, Mynydd y Gwynt, Comments on Written Representations, Local Impact Reports and Responses to the ExA's First Written Questions, 19 January 2015). The Applicant therefore appears to have changed their position on this matter.
36. Current good practice guidance (Natural England 2014<sup>3</sup>) seeks to ensure that turbines are sited so their turbine blade tips are more than 50m from habitat features likely to be used by bats. Surprisingly, the Applicant's currently proposed turbine layout does not comply with this guidance. The requirement referred to in paragraph 7 would allow for pre-commencement bat activity surveys which may then inform mitigation measures such as micrositing. However activity surveys are likely to only partially predict the risk of bat mortality from turbines. Post construction mortality surveys can only trigger turbine curtailment and not micrositing. NRW considers it to be preferable to site turbines away from the highest risk locations rather than building them in these locations and then using curtailment as a mitigation measure. Using curtailment rather than turbine siting also reduces the energy yield of the scheme.

### **Ecology - Otter**

37. The Applicant discussed the need for a European Protected Species licence with NRW in January 2014. Following correspondence the Applicant undertook further otter surveys in March 2014 and based on this the Applicant's letter dated 7 May 2014 concluded it no longer considered that a licence for otter was required. NRW agrees with these conclusions.
38. NRW consider that update surveys will be required prior to the commencement of construction (including felling and site clearance) because of the length of time which will have elapsed since the original surveys. We refer to the application terms which explain that surveys should not be more

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<sup>3</sup> Natural England Technical Information Note TIN051 Bats and onshore wind turbines Interim guidance, Third Edition 2014

than 2 years old. However, the application we have seen provides surveys older than 2 years and in relation to works proposed in 2018 (i.e. more than 3 years hence. Otters are peripatetic creatures. Given the potential for change in the status of otters the update surveys may conclude that a licence is required. *If* this is the case then NRW will need to consider the licence application on its merits at that time, taking into consideration any changes to the site, any changes to the conservation status of the species at the population (colony) level and any change to Government policy that may have implications for the consideration of imperative reasons of overriding public interest (IROPI) at that time. NRW consider that, based on our knowledge of the project from the ES and subsequent information provided by the Applicant, it should be possible to conclude no detriment to the favourable conservation status of the population of otter at the site subject to the agreement of suitable avoidance and mitigation measures.