

MYNYDD Y GWYNT DCO, MAY 2015

NRW RESPONSE TO APPLICANT'S 16TH APRIL 2015 SUBMISSIONS ON "OBSERVATIONS ON THE PARTICIPATION OF NRW IN THE EXAMINATION" AND UPDATE TO THE EXAMINING AUTHORITY AS AT 14TH MAY 2015

INTRODUCTION

1. This is a Response prepared on behalf of Natural Resource Wales ("NRW") in respect of the Applicant's "Observations on the Participation of NRW in the Examination" dated 16th April 2015, submitted by it for Deadline VII and an Update to further assist the Examining Authority.

SUMMARY

NRW's Response to Applicant's Observations

2. The Applicant submits at paragraphs 2 and 3 that NRW's approach during the Examination:
 2. ... *has continued to cause difficulty for MYG and demonstrably fails to assist the ongoing orderly conduct of the examination.*
 3. *The difficulty is pervasive, but is particularly clear in respect of: (i) Grid issues; (ii) Ecology with respect to Red Kite; (iii) Peat; and; (iv) Policy.*
3. The Applicant then makes a number of submissions (which we shall address below) and at paragraph 5 implies that a complaint is made towards NRW's conduct. The Applicant's submissions in this regard are misplaced and regrettable. It should be made clear that NRW has been properly facilitating the examination whilst advising within the scope of its statutory functions and the applicant is respectfully advised to concentrate its efforts on seeking to resolve those issues which remain in disagreement rather than making unhelpful and misguided submissions of this nature.

NRW's Update

4. An option for lease has been granted recently for the Nant y Moch wind turbine development site to the north west of Pumlumon. The development remains a registered NSIP and has been subject of an EIA which includes plans showing the current layout. Whilst the new lessee is entitled to change the content of the layout, this does not preclude the development qualifying as a "project" for the purposes of the EIA regime's requirement to consider cumulative impact.

NRW'S RESPONSE TO THE 'OBSERVATIONS' OF THE APPLICANT

Grid Connection

5. The Applicant asserts at paragraph 11 that: [Emphasis added]

It is a fair inference to make that NRW's approach has changed from a perfectly proper one of highlighting the need to undertake such cumulative impact assessment of the connection between the windfarm and a proximate part of the grid to one of delaying the consenting of any Mid-Wales windfarm until the NG NSIP has been considered and determined.

6. There is no such a fair inference (or at all) and NRW rejects any suggestion of impropriety. The applicant disagrees with NRW's advice, and, instead, reverts to questioning the 2013 section 42 consultation response at this late stage of the examination (whilst simultaneously making unhelpful submissions as to NRW's conduct) and notwithstanding the inherent iterative nature of the DCO hearing determination process. NRW is surprised that the applicant adopts this approach instead of seeking to advance a positive case (i.e. with actual evidence on key matters) and to seek to resolve those extant matters in contention: in *combination* impact assessment of the Grid Connection between the Mynydd y Gwynt DCO wind farm and the National Grid NSIP. However, the Applicant appears to have made a commercial decision to confine its own consideration of Grid Connection (despite accepting that such a Connection is obviously necessary for actual operation of its proposal) so as to instead exclude from account its undertaking consideration of cumulative impact.
7. In respect of Grid Connection, EN-1, paragraph 4.9.2 provides that: "The applicant will liaise with *National Grid...*" "to secure a grid connection" and that securing a connection is a commercial risk for the applicant. Paragraph 10.9.2 reminds the Applicant to prepare applications in an "integrated way". NRW refers the Applicant to the early July 2012, *National Grid*, Project Need Case (a public document previously submitted by NRW) which includes at Table 3.1 Nant y Moch but *not* Mynydd y Gwynt. NRW notes that it appears that the Applicant did not and has not in fact liaised with National Grid as required by EN-1.
8. NRW responded in detail on 7th July 2013 in its covering letter and detailed Annex. See the attached covering letter at **Appendix 1** to this Submission. NRW has also previously referred to the Applicant meeting PINS on 10th December 2013 which minutes the Applicant stating:
- 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.*
9. (This statement is incorrect and misleading. In fact, the section 42 consultation raised significant issues with ES methodology (see below). NRW's consultation response is also recorded in **Document MYG-AD-5-APP44** List Item 191 that NRW had identified expressly the Mid Wales Connection Project as *not* encompassing the MYG wind farm.)

10. The PINS meeting minute also records: [Emphasis added]

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....

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;

- *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: HRA2 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; ...*

Specific decisions / follow up required?

- Applicant to send HRA Report to NRW

11. NRW restates that it has itself not, nor ever has, agreed to *confine* the geographical area of the scope of the potential Grid Connection corridors. By contrast, the Applicant's HRA Screening Report, July 2014, **Document MYG-AD-9**, asserts at paragraph 40 that: [Emphasis added]

Following a telephone conversation with NRW (pers comm: Mr Chris Forster Brown and Dr Carol Fielding, January 2014) a 10k buffer around the proposed windfarm development was agreed as an appropriate geographical scope. Sites falling outside this 10km buffer were deemed to be not relevant to this proposal. This is because there can be no causal link between sites at a distance greater than 10km from the proposal and the proposal itself. This is the case for the proposal in isolation and in combination with other proposals. Therefore, a 10km buffer was generated through the use of GIS and all European sites within this buffer were interrogated.

12. NRW was then consulted by letter about the HRA and responded on 25th February 2014, including with a detailed Annex 1: NRW's Comments on HRA Screening Report letter (see Appendix 4 to the HRA Screening Report, July 2014; but see (for ease of access) attached at **Appendix 2** hereto. The covering

letter included (as has been expressed in the NRW Response to EX A's Second Round Questions):
[Emphasis added]

... we note that the windfarm cannot operate without the construction of a new grid connection and the screening report identifies two potential routes for this connection. It appears that the potential locations for the grid connection have not been agreed or discussed with the grid provider and no planning application submitted by them for the proposed corridors. The lack of any agreement between yourselves and the grid provider suggests that there is a reasonable likelihood that the potential grid connection corridors may be amended.

13. The covering letter Annex 1, paragraph 1, Item 1.1 included: [Emphasis added]

2. On page 2 paragraph 2 the report confuses the difference between a HRA and a test of likely significant effect. The purpose of the screening report is to determine if an appropriate assessment is required.

14. Paragraph 2, Item 1.1 included:

We also refer you to our own guidance note "Assessing Projects under the Habitats Directive: Guidance for Competent Authorities" and a copy of this is attached to this letter.

15. Paragraph 3, item 1.1 included: [Emphasis added]

The grid connection is included in the project description in section 4 and two potential grid connection corridors are suggested. The status of these corridors is unclear and there appears to be a reasonable likelihood that they will be amended. SPEN (the district network operator) have undertaken no consultation on the corridors and they do not appear to have undertaken any routing work to have identified the corridors. Further information is required on how these corridors have been identified.

16. NRW notes from the foregoing that the Applicant, from an *early* stage, appears *not* to have consulted as advised (and as required by guidance) with National Grid but instead appears to have consulted with another entity (or has declined to consult with the relevant part of NG), and has declined to extend the scope of its HRA (in early 2014) to include in-combination effects for relevant and important matters necessary for operation. This was, and is, a commercial decision for the Applicant.

17. For completeness, NRW agrees that, for the authorized development (all other matters aside and in isolation) within the Planning Act 2008, the DCO project is a single 'project'. However, for the purposes of that Act and the other regimes made relevant to that Act the DCO project must be considered 'in combination with other plans or projects'. Further, in contrast with an EIA process, the HRA process requires also a precautionary approach to be adopted to such an assessment.

18. By Regulation 2(1) and Regulation 61 of SI 2010/490 (transposing Article 6(3), HRA Directive):

(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
- (b) is not directly connected with or necessary to the management of that site,*

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

19. The EC Guidance “Managing Natura 2000 Sites” (November 2001) advises, at section 4.3, on the scope of plans or projects includes: [Emphasis added]

4.3.1. Project

Support for a broad definition of ‘project’ is reinforced, by analogy, if we refer to Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 97/11/EC) (11). That directive operates in a similar context, setting rules for the assessment of environmentally significant projects. Article 1(2) of Directive 85/337/EEC provides that ‘project’ means:

‘the execution of construction works or of other installations or schemes — other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.’

As can be seen, this is a very broad definition (see Annex I, point 6), which is not limited to physical construction. For example, a significant intensification of agriculture which threatens to damage or destroy the semi-natural character of a site may be covered.

20. Section 4.4 provides that the phrase “*likely to have a significant effect thereon, either individually or in combination with other plans or projects”* “*encapsulates a cause-and-effect relationship. On the one hand, it is necessary to explore what sorts of effects are covered (‘significant effect’), and then to explore what sorts of causes are likely to create such effects (‘likely to have ... either individually or in combination’).*
21. The IPC Advice Note 10: *Habitat Regulations Assessment relevant to nationally significant infrastructure projects* states at page 5: “*Applicants must conclude whether the proposal, either alone or in combination with other plans or projects but effects in combination with other projects may be significant. The protective measures of the Directive could be seriously undermined if these combinations of projects escaped assessment. Whilst there is no legal definition of what constitutes a plan or project for the purposes of the Habitats Regulations, the Planning Inspectorate advises that the following should be considered (please note this list is not exhaustive): ... projects on the National Infrastructure’s programme of projects.*
22. The National Infrastructure’s Programme of projects has included since 2012 the National Grid Mid Wales Electricity Connection (N Grid). See:
<http://infrastructure.planningportal.gov.uk/projects/wales/mid-wales-electricity-connection-n-grid/>
and
<http://www2.nationalgrid.com/uk/In-your-area/Projects/Mid-Wales/> .
23. NRW notes that the MyG DCO application project reasonably qualifies *within* the scope of the phrase: “*combinations of projects*”.

Red Kite

24. The Applicant asserts at paragraph 12 that: [Emphasis added]

The lack of transparency in NRW's retention of red kite nesting data was highlighted at the ISH. NRW's submissions for deadline vi make no reference at all to the fact that NRW has in its possession and has access to red kite nesting data. The approach taken by NRW is one which leaves the examination in an uncertain position.

25. This statement is misplaced and regrettable. NRW has been wholly transparent with the data that it holds and has made this clear to the applicant and to the examination. It is the data of a third party and accordingly its disclosure is not within NRW's control and its position is governed by the Environmental Information Regulations 2004. As repeatedly explained it is a matter for the Applicant whether and how it acquires that data from the owner and is not an issue which NRW can or should seek to influence. The applicant has to date evidently not managed to acquire the data (whether or not it has made any effort to do so is unclear) - and its failure to do so leaves the Examining Authority in a position where it has no evidence on which to determine an important and relevant matter. The Applicant has until 20th May 2015 to acquire that data from its owner and make any relevant submissions it chooses to for NRW to consider (if a reasonable time allows).

26. In fact, it is clear from File 5, Consultation, Part B, **Document MYG-AD-5-APP44**, that the Applicant has had a considerable period in which to collect and purchase relevant data. The first time that the Applicant consulted NRW was in July 2013. The NRW response included at paragraphs 53-58 (List Items 128-135), extensive comments about birds, including Red Kite:

55. Good practice guidance (SNH 2010) suggests that baseline information for some species, needs to be collected beyond the development boundary. It is not clear if the relevant study areas conform with this guidance. For example, it is recommended that red kite nesting information is collated for a distance of 2km from the windfarm boundary. Justification is required for the omission of this information...

[MyG "Response [to List Item 128]: The ES Ecology Chapter 11 has been updated with the study areas]

58. Overall with regard to the assessment of impacts on birds in the ES we require further information on the methodology and results before we can agree with the conclusions of the assessment.

[MyG "Response [to List Item 134]: More information will be provided".

27. Ultimately, the Applicant has evidently not made adequate efforts to acquire the relevant information between July 2013 and May 2015 by which to accurately identify the Red Kite.. This is a matter of the Applicant having exercised a commercial choice during this near 2 year period and it is inappropriate and regrettable for the applicant to now seek to implicate NRW for its own failures
28. NRW rejects the contention that it is being unhelpful. In fact, NRW has been consistently *helpful* to the Applicant (when *asked* for advice), the ExA, and to third parties. NRW rejects the Applicant's own suggestion (at paragraph 13) that NRW's approach is "*at best unhelpful*" and rejects *any* adverse inference

sought to be drawn. NRW notes that the Applicant *appears* to seek to distract from its own failures of approach at this late stage of examination.

Peat

29. The Applicant asserts at paragraphs 14 and 15 that:

Worse, [NRW] does so by selectively choosing those few data points which suit the point which it wishes to make in its submissions. Hence, NRW has: (i) Kept its own peat monitoring data to itself since 2013; (ii) Selectively presented a small number of data points in its submissions, and; (iii) Accordingly, caused the examination to have to examine these factual issues at the end of the examination process, after the conclusion of the ISH.

15. Ultimately, MYG submit that the peat issue resolves fairly simply upon reviewing the peat measurement data, as again summarised and appended to the deadline vii submissions from MYG. However, it is at least frustrating that NRW has approached the matter in this way, for whatever reason, and only at this late stage introduces its own data and further does so in a way which is partial rather than seeking to assist in a transparent exploration of the real issues.

30. The Applicant responded to the previously expressed concerns of NRW including in ‘Comments on written representations, local impacts reports and responses to the ExA’s first written questions, Deadline III, 19 January 2015’ as follows:

5. Ecology

Peat ...

5.5 MYG is currently in discussion with NRW’s peatland specialists ... regarding the methodology adopted for peatland mapping/probing in order to understand what NRW’s specific concerns are with respect to any methodological concerns. Discussions to date have revealed that NRW were not satisfied with the spacing of some of the peat probing and that they considered it was not at fine enough scale to identify small areas of high quality habitat. As a way forward, NRW has suggested that areas within the limits of deviation are probed at a finer scale pre-consent, with other areas probed post consent. ... To be clear, MYG does not propose to probe areas that will obviously never form part of the infrastructure area.

31. Ultimately, the Applicant has of its own volition chosen to not undertake further finer ground surveys (including within the limits of deviation) between July 2013 and April 2015 by which to accurately identify the extent of peat depths within its proposed limits of deviation. Instead, it relies, on what is considered by NRW to be an unreliable modelling of peat depth. NRW has properly advised the Applicant, over the 2 year period which the applicant has elected not to act upon and rather now seeks to implicate NRW for its failures.
32. NRW rejects the assertion that it has acted or that it acts “selectively” and that it has deliberately withheld information. NRW expresses its surprise and disappointment at the Applicant’s bold contention. Its boldness can only be considered to seek to engender a diversion from the Applicant’s own shortcomings in preparing for, in its actual consulting on, and in its pursuing this particular application for consent for authorization. This is not NRW’s application – and the onus is firmly upon applicant to ensure that the

actual extent of surveys undertaken has no gaps in evidence (as it currently the situation), is adequate and fit for purpose. NRW has repeatedly advised to the contrary and the applicant has not acted upon such advice.

33. In fact, it is clear from File 5, Consultation, Part B, **Document MYG-AD-5-APP44**, that the first time that the Applicant consulted NRW on peat was in July 2013. The NRW response included at paragraphs 59-65 (List Items 134-139; 198-199), extensive comments about Peat and, in subsequent paragraphs, about the related matter of Carbon Assessment. In particular:

135: The ES needs to include information on how the peat contours were calculated (figure 11.3) have been calculated from the peat depth data and the accuracy of these contours. [NRW] may have further comments once we have been provided with this information and we would wish to be further consulted on this prior to the ES being submitted for a DCO.

[MyG “Response: Further information on how the peat contours were calculated has been included in the ES Ecology Chapter].

139: ... We therefore advise that an assessment needs to take into account and especially whether the amount of habitat adversely affected by the project has been underestimated.

[MyG “Response: The NVC has been revised in the ES Ecology Chapter 11 following the on-site meeting with NRW”]...

198: [NRW] cannot verify the carbon balance assessment without an excel table of the calculator being provided. We suggest that this is provided to us for comment and review prior to the finalization of the ES and the submission of the application to PINS. An example of omitted information is the volumes of peat to be disturbed at the site....

[MyG “Response: The full carbon balance Spreadsheet has been sent to NRW” [In fact, the spreadsheet was not “full”]]

199:[B]ased on the information provided we have the following comments ...

Following this S42 consultation there was no further discussion on peat prior to the start of the Examination with the exception of one email providing information on the methodology for drawing the peat modelling contours.

34. The Applicant in paragraph 14 makes reference to NRW making extensive new submissions in respect of peat and on the basis of data which we have had in our possession since 2013. In fact, properly understood, these alleged ‘new’ submissions are our Deadline 26 March submission which is *responding* to the Applicant’s submission to NRW of its Peat Management Plan on 3 March 2015 (and to the ‘Peat Comparison document’ submitted on 16 March 2015 during the ISH). The basis of the NRW submission is therefore a response to these documents and utilizes the previously collected 2013 data in order to respond appropriately to the Applicant’s new information.

35. The NRW data to which the Applicant refers are 27 peat depth samples collected with the Applicant's permission and actual knowledge during a site visit on 18 June 2013. The site visit was undertaken at the time of the s42 consultation and the data is referenced within NRW's S42 response as follows:

63. Natural Resources Wales have undertaken site visits to verify the Natural Vegetation Classification (NVC) maps presented on figure 11.2. There seems to be a general undermapping of priority habitat such as M17, M18 and M19 and an over-mapping of non-priority U5 and M15. The mis-mapping of M17 and M18 as M15 was especially noted at the following locations:

- to the east of turbine 12,*
- between turbines 10 and 12,*
- to the north-east to T8 where M17 has been mis-mapped as M25*
- either side of the track between T23 and T24 where there is much M17 and locally M18 in the polygon of M15d/U6d*
- Track before T19 has pockets of M17c in the polygon of M25a/U5b*

We therefore advise that the assessment needs to take into account and especially whether the amount of habitat adversely affected by the project has been underestimated.

NRW was therefore transparent about having collected data on this visit. NRW cannot explain why the Applicant chose to not previously request use of NRW's information. The NRW S42 response does not specifically contrast the NRW and Applicant's peat data, as opposed to the vegetation data, because MYG's peat data points were not included in the S42 consultation (they were only supplied as interpolated contours) and were only supplied in December 2014 during the Examination process.

Policy

36. The applicant respectfully demonstrates a lack of understanding as to the nature of the DCO examination procedure. The Applicant asserts at paragraph 17 that the purpose of the ISH is to enable parties to respond to questions raised by the ExA and that there is some bar to other points being raised.
37. The primary vehicle for consideration of matters under the Planning Act 2008 is by way of written representations. This is in contrast to an inquiry under the Town and Country Planning Act 1990.
38. NRW submits that the Applicant in error disassociates the issue specific hearings from the 6 month statutory hearing period. The latter is the relevant compass of the "hearing" and fairness is to be judged against that and not a narrower compass of the 'ISH'. The Applicant appears to recognise this wider compass as curing any unfairness to others because it introduced, in about month 4 ½ of 6, entirely new photomontages and wireframes not before subject to any previous consultation or advertising to the wider public who may be concerned and contended that those who may be interested may request to see them.

Applying the Applicant's approach, such new material ought to be excluded on the basis of unfairness to the wide public who may not know to ask to see that new material. However, material may be submitted until closure of the 6 month hearing envelope.

39. As NRW appreciates, the purpose of the issue specific hearings is to enable a dialogue about matters of concern in the examination,, for that dialogue to take place with the Ex A's agenda as a facilitative framework, and to enable issues to be clarified and subsequently more refined written submissions to be made to the Examining Authority to assist its recommendation.

Remaining Examination

40. Once again, The Applicant's comments are regrettable.
41. It is, not NRW's role to buttress such omissions or inadequacies present in the Applicant's Application for this DCO nor to in some way accelerate its consultation responses in circumstances where the Applicant has since July 2013 been on notice of numerous issues of concern to NRW but chosen, for no doubt sensible commercial reasons, to not proactively engage with NRW in relation thereto.

THE APPROACH OF NRW DURING CONSULTATION

42. NRW sets out below its approach to consultation and during the 6 month hearing because of the above Submission document by the Applicant. Reviewing the material below shows a very different picture emerging to that sought to be painted by the Applicant in its “Observations”.
43. The first matter to note is that the Applicant has included in its consultation report discussions concerning not NRW but with a different entity which was subject to particular functions: Countryside Council for Wales (“CCW”).
44. File 5 of the Applicant’s EIA includes “Consultation Documents” but *no* correspondence from NRW itself. A 7th July 2013 NRW section 42, Planning Act 2008 consultation response and covering letter is not actually included (the Detailed Annex is part repeated) whilst the 25th February 2014 NRW consultation response on HRA matters (including Grid Connection) appears in Appendix 4 to the July 2014 MYG HRA Screening Report submission (**Document MYG-AD-9**).
45. **Document MYG-AD-5-APP1** July 2014 includes correspondence not with NRW but with a different and now functus entity, CCW.
46. So far as relevant, at Tab 2 of **APP1**, CCW responded on 11th August 2005, some 9 years before the current MyG application and in the context of the then first Edition of TAN 8 (which had been published in July 2004 for consultation). CCW’s “Comments on [EIA] Scoping Report” included:

We note that the proposed development site lies outside any of the [SSAs]. While we appreciate that policy does not preclude the development of large scale (>25MW) [sic] outside the SSAs, we must emphasise that any such developments have to be considered in the context of likely development proposals within the SSAs and the potential cumulative impacts associated with them.
47. Further:

The site lies within the Upland Ceredigion Area of Outstanding Historic Interest and the Cambrian Mountains ESA therefore we strongly recommend that an Assessment of the Significance of Impact of Development on Historic Landscapes (an ASIDOHL exercise) is completed for the project.
48. CCW provided in Annex 1 Detailed Comments. This included Key Species which included Bats and Otters, (and strongly recommended “detailed surveys”) and also Birds (including Red Kite) and CCW advised that Kite be included “in any surveys”. Annex 2 included Detailed Comments on the Landscape Aspects of the Scoping Reports, in relation to the then “Project details”, including as assessment addressing “key recreational users in addition to those using the Wye Valley Walk”. “Wider Issues” included advice that cumulative effects were “likely to be significant, given the location, number and size of existing developments”. Appendix 1 included the legislative provisions for Bats and Otters. Appendix 2 included additional Viewpoints.

49. CCW explained that if it could be of any further assistance, then the Applicant should not hesitate to contact the case officer.
50. The Applicant (by its expert Anne Priscott) responded on 17th October 2005 to CCW about its “Landscape and Visual Assessment Scope”. This included concern about the “extra cost and effort of undertaking a “detailed landscape character assessment up to the proposed 30km radius” and the then proposed development and wireframes of that development. She attached a Report Structure which she felt “is useful at this stage to show how [she] inten[ed] to systematically present [her findings]” and it included at Section 11 “Assessment of Cumulative Effects”.
51. On 20th October 2005 the Applicant again responded to CCW. The then Project was for 27 turbines “that are 110m to tip”. The letter author, Anne Priscott explained on behalf of the Applicant in relation to ASIDOHL that:

I feel that an important element of the historic character assessment is concerned with identifying and assessing the importance to be placed on the historic features in, and historic landscape characteristic of, the landscape and their settings. In addition, the visual assessment is based on the extent of visibility of a development, the perception of viewers and the sensitivity of historic landscape receptors.

In order that these assessment can be conducted, professional judgments need to be made on the relative value and quality of historic landscape elements and historic features, their settings and historic visual receptors.

52. On 1st November 2005, the Applicant wrote to CCW including Richard Kelly. On 20th December 2005, CADW (Ancient Monuments Administration) wrote that in its view, the EIA must assess the impacts on the proposed wind farm on the scheduled ancient monument sites, and that professional archaeologists should be contacted to undertake this. In response, the Applicant appears to have engaged Melissa Conway.
53. Some time passed, and on 4th October 2007, the Applicant wrote to CCW including “Final Viewpoint Selection” which included Viewpoints 1 and 3, “Plynlimon”, a number of wireframes, and as follows: [Emphasis added]
- The area to be included in the ASIDOHL assessment and the full scope of the Historic Landscape and Visual Assessment (HVLA) has required some further refinement...*
54. In 2010, the Applicant proposed to consult again (see **Document MYG-AD-5-APP9**), this time under the Planning Act 2008. The then proposal draft consultation document explained that the proposal comprised “23 3 MW turbines i.e. a 69 MW wind farm” located at “Sweet Lamb Farm ... on privately owned agricultural grazing land”. There was no mention in that draft document of the proposal’s area comprising or including a ‘rally complex’. Included at Appendix F was the March 2010 non-technical Summary of the proposal. This included a project description of, and an application for, 23 turbines, of 69MW maximum

installed capacity, and that the maximum height to blade tip would “therefore” be 125m based on an 80m height to hub and a maximum swept diameter of 90m. No other actual project was described in this document. Figure 2.1 identified a Proposed Site Layout of 23 numbered turbines in actual locations (in some parts different to those subject of the later DCO Application. See for example, the **Document MYG-AD-5-APP13** Preliminary Environmental Information, Figure 2, and the DCO Application plans showing in more detail the turbine locations of WT 4, 5, 8, 16, 25 and 26).

55. NTS Section 6.1.2 *included* consideration of *Cumulative* Landscape and Visual Impact Assessment. Paragraph 4 stated:

The assessment of cumulative effects on the landscape character of the receiving landscape showed that the development of the proposed Mynydd Y Gwynt Wind Farm would bring about some new cumulative impacts on the landscape character of the Plimlimon aspect area.... There will be some cumulative effects on the ... Severn Way, Wye Valley Walk, and Glyndwr’s Way. The significant effects are limited to sections of the Severn Way and the Wye Valley Walk.

56. The NTS Ecology Section referred to two additional bird surveys undertaken in 2008 after consultation with CCW and considered that otters had the potential to be affected indirectly due to watercourse pollution but that measures to reduce this would be included in the Environmental Monitoring Plan.
57. The Applicant sent to PINS the Final Draft of the Statement of Community Involvement. This included in addition under part 1 the change to an installed capacity of 81MW, including 27 wind turbines, and under part 3, the renaming of the site as the “Sweet Lamb Rally complex”.
58. On 13th May 2011, PINS responded to the Applicant including that: [Emphasis added]

Part 3 of the draft SoCC refers to the site being “located on the periphery” of one of the TAN 8 areas but then states that it is situated about 7km east. Our understanding is that the site is actually outside one of the TAN 8 areas rather than being on its periphery and the reference to it being about 7km east would support this. We would suggest that this be clarified.

59. **Document MYG-AD-5-APP12** shows the resulting changes, including that the site:

Is located about 7km east of an area of land identified by the [WAG] as one of the seven [SSAs] designated as suitable for large scale wind energy generation...

60. Also during 2011, an archaeologist (Melissa Conway) on behalf of the Applicant corresponded with CADW on *archaeological* matters and the “scope” of such matters (see **Document MYG-AD-5- APP 1**).
61. In May 2011, the Preliminary Environmental Information (see **Document MYG-AD-5-APP13**) included consideration at Section 5.1.2 of *Cumulative* Landscape and Visual Impact Assessment, and at Section 5.5 of Historic Landscape Visual Assessment. In particular, this included that: [Emphasis added]

The site is subject to a Tir Gofal agreement is principally in agricultural/grazing use... The site currently has an extensive existing track network which is used regularly as part of the Rally Complex...

62. Tir Gofal means "Landcare" and was a whole farm agri-environment scheme which was available throughout Wales from April 1999. The Scheme aimed to encourage agricultural practices to protect and enhance the landscapes of Wales, their cultural features and associated wildlife. The Scheme was designed and operated by CCW and then by the Welsh Government. The Applicant considered the Agreement relevant because it has relied on it in its Preliminary Environmental Information but has not, to date, produced its Agreement to the Examining Authority.
63. Section 3, paragraph 5, of the Preliminary Environmental Information, explained the proposed site "performs better than the remaining areas in SSA D". Section 4, paragraph 4.1, sub-paragraph 1 identified that certain organisations were consulted and that these included CCW and CADW. (*i.e.* not FCW, the EA, or NRW); and at sub-paragraph 3 that there had been "extensive peat mapping".
64. NRW notes at this juncture that it has seen from 2,868 peat depth samples but they were, and remain, not close enough for NRW to be able to verify the accuracy of the peat depth relied on. Indeed, the Applicant itself has had to use speculative peat depths.
65. Section 5, Environmental Effects included the recognition that the introduction of the turbines and ancillary infrastructure would engender a significant effect on the landscape, and on tourist and recreational facilities in Hafren Forest picnic site. Paragraph 5.1.2, sub-paragraph 4 restated the "new cumulative impacts" on the Plynlimon aspect area, and on the Severn Way and Wye Valley Walk. Figure 2 now identified the 27 wind turbine locations.
66. On 8th September 2011, PINS wrote to the Applicant with its own list of consultees and explained that the list should not be relied on and that *adherence to consultation processes was the responsibility of the Applicant*. See **Document MYG-AD-5-APP41**.
67. On 23rd November 2011, the Applicant consulted with the Environment Agency (today NRW) which advised that: (see **Document MYG-AD-5-APP8**, Environment Agency): [Emphasis added]
- Impact on peat resource- should include an assessment of loss of carbon sink.*
[MYG Response: Peat depth survey carried out. Carbon balance assessment undertaken].
68. NRW notes (again) at this juncture that it has seen from 2,868 peat depth samples but they were, and remain, not close enough for NRW to be able to verify the accuracy of the peat depth relied on. Indeed, the Applicant itself has had to use speculative peat depths.
69. In 2012, there were further consultation events. See *e.g.* **Document MYG-AD-5-APP24-25**. **Document MYG-AD-5-APP32**, Section 47 responses, which included (not as a Section 42 consultee), at Number 28, that from the FCW. These also included, at 31, from Linda Davies where the Applicant responded that "likely cumulative impact of the Mynydd y Gwynt wind turbines and other existing or planned turbines

will be considered in the Environmental Statement as part of the final application”; *and* that it was currently negotiating with SPEN about entering into a grid connection agreement but that the Applicant had no control over the actual grid connection and that would be considered in detail in a separate application.

70. On 15th May 2012, CADW responded to “Informal Pre-Application Consultation on Mynydd Y Gwynt Wind Farm” in relation to those matters within its remit “as a consultee on planning applications”, being scheduled ancient monuments or Registered Historic Landscapes and its views were provided without prejudice to the views of the Welsh Government.
71. In April 2013, NRW was created as a new and discrete entity with certain functions. **Document MYG-AD-5-APP8** Consultation Report includes references to “NRW” and attributes the views of that entity to the previously expressed views of CCW notwithstanding that NRW did not actually exist before April 2013.
72. However, the Applicant was on considerable notice of a number of matters raised subsequently by NRW. For example, on 8th November 2011, “Consultation Meeting and submission on draft Ecology Chapter” included that broad ecological study of grid route undertaken (to which the Applicant stated that a “desk study of grid route completed”); and consideration of impact on peat (to which the Applicant states “deep peat avoided, track network between turbine 24 and 21 reduced to avoid deep peat...”). The views of the Environment Agency were recorded (from a 23rd November 2011 meeting and a letter dated 19th January 2012) as “now NRW” and included: “Impact on peat resource- should include assessment of loss of carbon sink” to which the Applicant stated “Peat depth survey carried out. Carbon balance assessment undertaken”. The views of the Forestry Commission Wales dated 21st June 2011 were also recorded: “Need to reference FCW’s Policy Position on development affecting woodland – woodland temporary removed [sic] for wind farm operation must be replanted as soon as possible following decommissioning” and to which the Applicant stated: “Replanting is offered in the Environmental Statement”. But by April 2013, also incorporated within NRW but not here recognised as such by the Applicant.
73. In May 2013, the Applicant published a Notice of Application under Regulation 4 (see **Document MYG-AD-5-APP34**) for the “construction of 27 wind turbines up to 125m to tip”.
74. The May 2013 Non-technical Summary of the Environmental Statement, Volume 1, shows at **Document MYG-AD-5-APP36** a photograph of the existing car park within the site containing many cars limited to that particular area and to parts of certain tracks leading from it. Another photograph shows crowds of people within certain demarcated areas near to certain existing the tracks. Page 6, The Site, now asserted that, rather than tracks, the “Rally Centre site extends to approximately 582ha, [and that] less than 12ha (i.e. less than 2%) of the site will be required for this development”.

75. NRW notes at this point that, assuming this is the actual limit of the requirement for the development, it is odd that the Application red line area is drawn around the whole of the 582ha. This is not least because the Applicant's own environmental information recognises that no more than 2% of the Application area is required for the authorized development. On this basis, NRW notes that it is difficult to see how the Applicant could properly justify exclusion of subsisting CROW rights across the 98% majority of the remaining Application site Area. It could not be said that those rights were justified as necessary to be excluded (by operation of the legislation previously identified) *because* of the DCO proposal.
76. Page 13 considered Cumulative Landscape and Visual Impact Assessment, and explained that:
- The only significant effect would be on the Plinlimon aspect area... There would also be cumulative significant effects ... on sections of the Severn Way and the Wye Valley Walk...*
77. Page 18 considered Cultural Heritage.
78. The Applicant then contended at page 18 that “peat depth surveys have been carried out and the design optimised so that turbines... avoid deep peat where possible”.
79. NRW notes at this point that the Applicant's approach to peat depth samples appears premised on a static proposal and not an outline proposal. It is because the proposal is in the nature of a Rochdale Envelope approach, in its reliance not on particular turbines but on a series of envelopes, that a worst case approach is required to be undertaken to peat considerations. Furthermore, the NPS's recognise the importance of peat and maximizing the benefits by reference to a carbon calculation. Absent relevant data, the inputs into the calculator are, by definition, speculative, and so there is no evidence upon which to conclude a relevant and important matter.
80. On 7th May 2013, NRW is recorded as been consulted upon in respect of the above. See **Document MYG-AD-5-APP44** at Number 77. The Applicant did not there include the important NRW letter itself (see below) but instead included a summary of the representation and then a response to the summary characterization by the Applicant of the NRW representation.
81. The summary includes at Items 89, and following, consideration of: a) the NTS (“the NTS states that Welsh policy is supportive of the project. However, TAN 8 limits the potential for development of large scale wind farms outside the SSAs”; and b) under Landscape, in particular that: i) “open access and such as Pumlumon is not mapped ...”; ii) there has been a “lack of transparency in defining significance within the assessment” [by Anne Priscott, [in that she has introduced an intermediate category that she has described as] “moderate to substantial” which is “not consistent” with most LVIAs for other development. [i.e. the Applicant understates or underscores the impact on Plynlimon, the Severn Way and Wye Valley Walk]; iii) clarification is required on the Nant y Moch turbine layout (to which the Applicant responded – not that this SSA D area proposal be excluded from account but rather that – it be given “limited weight”

because it was not a *submitted* scheme; iv) the LVIA omits mention of Historic Landscapes, leaving this to Cultural Heritage (to which the Applicant responded that this Historic Landscapes has been addressed in the Cultural Heritage section); v) at Item 98 that “We suggest that the figures also indicate the Annex D refined study area; and vi) under Items 110- 127 consideration of Pumlumon and also cumulative landscape effects (including consideration of discrepancies and omissions). Items 118-119 included: [Emphasis added]

42. There are no stated significant cumulative effects on the Powys LCAs including M21 Plynlimon. It appears that as this LCA incorporates Plynlimon and Plynlimon moorlands visual and sensory aspect areas its overall sensitivity is downgraded and therefore the effects are not considered significant. We disagree with this approach and consider that the effects would still be significant adverse because the most sensitive parts which have national significance would still be affected.

43. In terms of the design of the windfarm we are concerned that the wind turbines are located on a series of ridges with steep slopes, often at or very close to the break of slope. This is most evident in the view from The Wye Valley Walk and A44 where some turbines (e.g. 20, 21, 25) will dominate the skyline (Figure 8.11v). Their height of 125m will make the apparent scale of the hillside here diminish (around 140m from the top of break of slope to the valley floor). In higher views, mainly from the Pumlumon ridge, the wind turbines are clearly located in a ridge and valley landscape which they both diminish in scale and appear awkward within (Viewpoint 1, Figure 8.11a).

82. Items 123 -127 included (using the NRW Annex 1 paragraph numbering): [Emphasis added]

47. The main visual impacts are on National Trails- especially the dramatic effect on the Wye Valley Walk and secondly on the Severn Way at or near the sources of the Wye and Severn, and on users of Pumlumon including walkers along the Cambrian Way.

48. The main cumulative landscape effects are on Pumlumon in combination with the proposed Nant y Moch wind farm...

49. The main cumulative visual effects are on users of Pumlumon, and the Cambrian Way on this stretch of ridge, in combination with the proposed Nant y Moch windfarm, and to a lesser extent the operational Cefn Croes windfarm (although the ES does not identify this). There are also cumulative effects on the Severn Way near its source and on the Wye Valley Walk at around 5.8km in combination with Cefn Croes and Bryn Titli.

50. With regard to wind farm design, the main improvements to the scheme would be the removal of turbines 20, 21 and 25 based on the visualisations submitted. This would reduce effects on the Wye Valley Walk at one of its closest points, and on the most publicly visible part of the site, from the A44. Some alteration may be needed to ensure the remaining nearby turbines looked as part of a coherent group.

51 Pumlumon and its associated sources of the Wye and Severn will undergo significant landscape and visual effects if this project was to be consented. These are important places on Wales' landscape and culture although they are undervalued in terms of designations. These potential impacts need to be set in the context of Welsh planning policy and the expectation in TAN 8 that “In the rest of Wales outside the SSAs, the implicit objective is to maintain the landscape character i.e. no significant change in landscape character from wind turbine development”.

83. NRW notes that the foregoing summary has been its (discrete) core historic and its core landscape concerns to date, May 2015.

84. The Applicant's response was that the balance of the landscape effects with "the advantages of low carbon energy generation" mean that it is acceptable to have the landscape effects. See Applicant's response at List item 126.
85. Item 134 addressed the need for further information about birds. NRW notes that the foregoing summary has remained consistent about Red Kite objections to date, May 2015.
86. Item 135 addressed the need to include information about peat contours and their calculation, and that NRW: [Emphasis added]

May have further comments once we have been provided with this information and would wish to be further consulted on this prior to the ES being submitted for a DCO.

87. Items 136-141 provides extensive comments on peat, including at Item 138 to the relationship with a Carbon Calculator. NRW notes that the foregoing summary has remained consistent with its Peat objections to date, May 2015.
88. Items 143- 144 identified the Otter as being of international importance and the need for an assessment of it in the HRA and also for licensing. NRW notes that the foregoing summary has remained consistent with its Otter objection to date, May 2015.
89. Item 148 address Bats and the 50m zone to prevent collisions. NRW notes that the foregoing summary has remained consistent with its Bat objection to date, May 2015.
90. Further, and importantly, NRW addressed under Item 158 (and following) the impact of the proposal on the non-statutory Register of Landscapes of Historic Interest in Wales:

We consider that the magnitude of impacts have been consistently underscored [as in underplayed] at Stage 3 of the ASIDOHL...

91. At Items 170-171, NRW explained that it: [Emphasis added]

Has particular concerns that the proposed development would, in [the Applicant's view] have a "Fairly severe" impact on the Pumlumon HCA, which is at the hub of the Upland Ceredigion HLA and so highly emblematic of its characteristics overall. The importance of the historic, legendary associations with the Mabinogion tales and the panoramic views from the summit cairns are widely recognised in Wales. The moving turbine blades in the proposed development would be prominent in the views from the summits of Pumlumon Fawr (HCA Viewpoint Figure 9) and Carn Biga (HCA Viewpoint Fig 10) and dominate the views from Pen Pumlumon-Arwhstli (HCA Viewpoint Fig 9)...

It is particularly important to establish the cumulative impact of the proposed Nant y Moch development, as this would cause potentially comparable impacts to the Applicant development, on the west side of the Pumlumon HCA.

92. The Applicant's response at Item 171 was that it had excluded from account consideration of cumulative impacts as part of ASIDOHL 2 and because CADW had (as opposed to NRW) not identified a requirement to consider cumulative impacts.

93. NRW notes that Mr White has explained in his expert opinion the mirroring effect on the Refined TAN 8 area were this particular DCO to be granted. In essence, this DCO would operate to inhibit development within the Refined Area of SSA D. That is relevant and important under EN-3, paragraph 2.2.2 and may be given determinative weight. What weight may be given to that matter is for the decision maker.

94. NRW notes that Article 5(1) of the EIA Directive provides:

In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) *the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;*

(b) *the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.*

95. Annex IV of the EIA Directive includes, pursuant to Article 5(1), a requirement to consider under paragraph 4 of the description of the project, and that that description “should cover: [Emphasis added]

the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

96. It is clear from the guidance quoted above that “project” for EIA purposes embraces “schemes”. The EC Guidance “Managing Natura 2000 Sites” (November 2001) advises, at section 4.3, on the scope of plans or projects includes: [Emphasis added]

4.3.1. Project

Support for a broad definition of ‘project’ is reinforced, by analogy, if we refer to Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 97/11/EC) (11). That directive operates in a similar context, setting rules for the assessment of environmentally significant projects. Article 1(2) of Directive 85/337/EEC provides that ‘project’ means:

‘the execution of construction works or of other installations or schemes — other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.’

As can be seen, this is a very broad definition (see Annex I, point 6), which is not limited to physical construction. For example, a significant intensification of agriculture which threatens to damage or destroy the semi-natural character of a site may be covered.

97. NRW submits the following from the Europa website on EIA case law: [Emphasis added]

The scope of that obligation to assess impacts on the environment follows from the provision contained in Article 3 of Directive 85/337 as amended, according to which the environmental impact assessment is to identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of that directive, the direct and indirect effects of a project on human beings, fauna and flora, soil, water, air, climate and the landscape, material assets and the cultural

heritage, and the interaction between those factors. Given the extended scope and very broad objective of Directive 85/337 as amended, which are apparent from Articles 1(2), 2(1) and 3 of the latter (see, to that effect, Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraphs 30 and 31), the mere fact that there may have been uncertainty as to the exact meaning of the use of the conditional in the expression '[t]his description should cover' used in a note to point 4 of Annex IV to Directive 85/337 as amended, even if that also appears in other language versions of that directive, cannot prevent a broad interpretation from being given to Article 3 of the latter. Therefore, that provision should be taken as meaning that, where the assessment of the environmental impacts must, in particular, identify, describe and assess in an appropriate manner the indirect effects of a project, that assessment must also include an analysis of the cumulative effects on the environment which that project may produce if considered jointly with other projects, in so far as such an analysis is necessary in order to ensure that the assessment covers examination of all the notable impacts on the environment of the project in question. (C-404/09, Commission v. Spain, paragraphs 78-80)

98. Further: [Emphasis added]

Even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration. (C-392/96, Commission v. Ireland, paragraph 66; C-435/09, Commission v Belgium, paragraph 50) As regards the cumulative effect of projects, it is to be remembered that the criteria and/or thresholds mentioned in Article 4(2) are designed to facilitate the examination of the actual characteristics exhibited by a given project in order to determine whether it is subject to the requirement to carry out an assessment, and not to exempt in advance from that obligation certain whole classes of projects listed in Annex II which may be envisaged on the territory of a Member State (C-133/94, Commission v Belgium, paragraph 42; C-72/95 Kraaijeveld and Others, paragraph 51; and Case C-301/95 Commission v Germany, paragraph 45). (C-392/96, Commission v. Ireland, paragraph 73) ...

... whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted must not undermine the objective of the Directive, which is that no project likely to have significant effects on the environment, within the meaning of the Directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive screening, be regarded as not being likely to have such effects. (C-435/97, WWF and Others, paragraphs 42, 43, 45 and C-87/02, Commission v. Italian Republic, paragraphs 41, 42, 44)

99. Furthermore: [Emphasis added]

It cannot be inferred from the use of the conditional, in the note concerning point 4 of Annex IV to Directive 85/337 as amended, to the effect that '[t]his description should cover ... any ... cumulative ... effects of the project', that the assessment of the environmental impacts does not necessarily have to cover the cumulative effects of the various projects on the environment, but that such an analysis is merely desirable. (C-404/09, Commission v Spain, paragraph 77)

As regards the content of the assessment of environmental effects, Article 3 of Directive 85/337 lays down that it must include a description of the direct and indirect environmental impact of a project 33 (see Case C-322/04 Commission v Spain [2006], paragraph 33; Case C-2/07 Abraham and Others [2008] ECR I-1197, paragraphs 43-45 and Ecologistas en Acción-CODA, paragraph 39). Besides, Annex IV to the Directive includes a description of the cumulative environmental impact of the project in the information to be provided by the developer pursuant to Article 5(1). Likewise, when determining if a Member State must, pursuant to Article 4(2) of the Directive, subject a project listed in Annex II to an assessment because it is likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive, Annex III to the Directive specifies that cumulation with other projects is

one of the selection criteria. The Commission's allegation concerning the absence of concrete elements concerning the criteria used for evaluating the indirect impact of the doubling of section 1 in the environmental impact declaration of 2 April 1998 has not been seriously contradicted by the Kingdom of Spain. Indeed, the latter merely alleged that the impact declaration in question required that the necessary measures be taken to prevent any environmental impact, even when induced. (C-560/08, Commission v. Spain, paragraphs 98-99)...

As regards the content of the assessment of environmental effects, Article 3 of Directive 85/337 lays down that it must include a description of the direct and indirect environmental impact of a project (see Case C-322/04 Commission v Spain [2006], paragraph 33; Case C-2/07 Abraham and Others [2008] ECR I-1197, paragraphs 43-45 and Ecologistas en Acción-CODA, paragraph 39). Besides, Annex IV to the Directive includes a description of the cumulative environmental impact of the project in the information to be provided by the developer pursuant to Article 5(1). Likewise, when determining if a Member State must, pursuant to Article 4(2) of the Directive, subject a project listed in Annex II to an assessment because it is likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive, Annex III to the Directive specifies that cumulation with other projects is one of the selection criteria. The Commission's allegation concerning the absence of concrete elements concerning the criteria used for evaluating the indirect impact of the doubling of section 1 in the environmental impact declaration of 2 April 1998 has not been seriously contradicted by the Kingdom of Spain. Indeed, the latter merely alleged that the impact declaration in question required that the necessary measures be taken to prevent any environmental impact, even when induced. (C-560/08, Commission v. Spain, paragraphs 98-99)

100. See also:

Judgment of the Court of 21 September 1999, Commission v. Ireland, Case C-392/96 Action for failure to fulfil obligations - Assessment requirement in respect of projects in the classes listed in Annex II - Discretion of Member States - Failure to take into account the nature, location and cumulative effect of projects - Constitutes a failure to fulfil obligations.

101. NRW notes that the Applicant has *excluded* from its assessment the cumulative impact of Nant y Moch “project” on Plynlimon in the Applicant’s assessment of the Mynydd y Gwynt DCO proposal. But the Applicant’s approach is legally flawed and it currently offers no evidence in its EIA assessment in the alternative to show that NRW is wrong in its expert evidence of that cumulative effect on Plynlimon from the proposal together with the development of Nant y Moch for wind turbine development. This is a relevant and important matter for the Examining Authority to take into account and to weigh.

102. NRW notes that the foregoing summary has remained *consistent* with its position on Cultural Heritage to date, May 2015. NRW has been helpful and clear throughout its participation.

103. List Items 158 and following addressed Archaeology and Cultural Heritage. The NRW Annex 1 response (see below) included (adopting its paragraph numbering): [Emphasis added]

82. Natural Resources Wales's remit with regard to cultural heritage mainly relates to consideration of the potential impacts on landscapes included on the non-statutory Register of Landscapes of Historic Interest in Wales (Cadw 1998, 2001). The proposed development is located within 10km of three of the landscapes included on the Register, namely the Ucheldir Ceredigion / Upland Ceredigion landscape of outstanding historic interest, the Dyffryn Clywedog / Clywedog Valley landscape of special historic

interest and the Cwm Elan / Elan Valley landscape of special historic interest. Impacts are therefore limited to 'indirect visual effects' (Cadw 2007).

83. We consider that the magnitude of impacts have been consistently underscored [as in underplayed] at Stage 3 of the ASIDOHL2 – Assessment of Indirect Visual Impacts. The following is a representative sample of Historic Character Areas (HCAs) in the two Historic Landscape Areas (HLAs) potentially most affected, where underscoring has been noted:

...

- Upland Ceredigion HLA, Pumlumon HCA, Table 2.1.4

This is one of the key and pivotal HCAs within the Upland Ceredigion HLA, containing numerous single and groups of Bronze Age summit cairns, and having important historic, legendary associations with the Mabinogion tales. We consider that the individual cairns or groups of cairns should have been assessed separately, and not as a single asset. The historic, legendary associations, are nationally well-known, and also should have been taken into account...

We consider, therefore, that although the proposed development would not be visible from the greater extent of this HCA, the high sensitivity of the heritage assets and of the historic associations within the extents affected, and the proximity of the proposed development to these, means that it would have a 'Considerable' to 'Fairly Severe' impact on this HCA overall...

87. Natural Resources Wales has particular concerns that the proposed development would, in its view, have a 'Fairly Severe' impact on the Pumlumon HCA, which is at the hub of the Upland Ceredigion HLA and so highly emblematic of its characteristics overall. The importance of the historic, legendary associations with the Mabinogion tales and the panoramic views from the summit cairns are widely recognised in Wales. The moving turbine blades in the proposed development would be prominent in the views from the summits of Pumlumon Fawr (HCA Viewpoint Fig. 9) and Carn Biga (HCA Viewpoint Fig. 10) and dominate the views from Pen Pumlumon – Arwystli (HCA Viewpoint Fig. 9)...

89. It is particularly important to establish the cumulative impact of the proposed Nant y Moch development, as this would cause potentially comparable impacts to the Mynydd y Gwynt development, on the west side of the Pumlumon HCA ...

91. On balance, Natural Resources Wales has serious concerns that the current proposal is unacceptable because of its 'Moderate' impact overall on the Upland Ceredigion, Clywedog Valley, Elan Valley HLAs, and its 'Fairly Severe' impact on the Pumlumon HCA in particular. Further mitigation should be considered including utilising turbines that are of a lower height to blade tip and removal of those turbines closer to the Pumlumon HCA.

104. NRW notes that the foregoing summary has remained consistent with its Cultural Heritage objection to date, May 2015.

105. NRW also identified in its Annex 1, paragraphs 109 and following (List Items 191 and following), Grid Connection matters. This included (adopting NRW's Annex 1 paragraph number):

109. The ES states that the Mynydd y Gwynt windfarm is the subject of a connection offer from SPEN. Reference to SPEN's Mid Wales Connections Second Strategic Optioneering Report (2012) shows that that this connection offer has not been accepted by the Mynydd y Gwynt windfarm. Natural Resources Wales' understanding is that SPEN's Mid Wales Connection project is therefore being planned and developed without taking into account the need to connect the Mynydd y Gwynt windfarm.

106. NRW notes that the foregoing concerns about Grid Connection feasibility and Mid Wales connections have remained consistent Grid Connection objection to date, May 2015.
107. Item 198 addresses the Carbon Balance and noted the *omission* of information on the volumes of peat to be disturbed at the site. The NRW Annex 1 (see below) included at paragraph 59 and following, under Peat: [Emphasis added]
- 59. The ES needs to include information on how the peat contours (figure 11.3) have been calculated from the peat depth data and the accuracy of these contours. Natural Resources Wales may have further comments once we have been provided with this information and we would wish to be further consulted on this prior to the ES being submitted for a DCO.*
- 60. The ES evaluates the blanket bog and modified bog habitats on the site as being of Regional- District value. This evaluation is not consistent with the definition in appendix 11.2 which states that a sustainable area of Annex 1 habitat should be regarded as being of international value....*
- 62. A peat management plan is required as part of the ES to also include management of nonorganic soils as part of the construction process. The objectives of this plan should be to demonstrate that the management of peat/soils will be undertaken to minimise the release of sediments to the River Wye SAC and minimise the oxidisation of carbon from stored peat and also provide information on the re-use of peat on the site and where all peat/soils will be stored to minimise environmental effects. This plan will need to closely relate to the Habitats Regulations Assessment and the Carbon Calculator.*
108. NRW notes that the foregoing summary has remained consistent with its Peat and Carbon Calculator objection to date, May 2015.
109. Under List Item 198, Carbon Balance was summarized. Adopting NRW's Annex 1, Appendix 2.1 paragraph numbering, this included: [Emphasis added]
- 116. Natural Resources Wales cannot verify the carbon balance assessment without an excel table of the calculator being provided. We suggest that this is provided to us for comment and review prior to the finalisation of the ES and the submission of the application to the Planning Inspectorate. An example of omitted information is the volumes of peat to be disturbed at the site.*
110. NRW notes that the foregoing concerns about Carbon Balance assessment has remained consistent to date, May 2015.
111. On 7 May 2013, **Document MYG-AD-5-APP40** shows that the Applicant wrote to section 42, Planning Act 2008, to consultees, including NRW. **Document MYG-AD-5-APP42** for the *first time* identified NRW as a Section 42(a) consultee.
112. NRW notes that the Applicant has not included in its Application documents, or consultation reports, the covering letter dated 8th July 2013. NRW attaches its response to the section 42(a) consultation to this Submission and includes its covering letter dated (not 7th May 2013 but 8th July 2013) and the accompanying Annex 1. The letter included important notice of relevant omissions in the Applicant's approach including as follows: [Emphasis added]

Natural Resources Wales was consulted on the scope of the EIA for the proposed Mynydd y Gwynt windfarm in 2005. Since this time there have been significant changes in policy and guidance with regard to windfarms and a large number of windfarm applications have been submitted within the identified TAN 8 Strategic Search Areas (SSAs) in Mid Wales. No updated scoping advice was sought in 2010 when you decided to apply for a consent for the project under the Planning Act 2008 although there has been continuing dialogue between us on some EIA topics. The time which has elapsed since we provided scoping advice on this project means that some of our advice in Annex 1 will not necessarily be consistent with that of 2005.

The proposed Mynydd y Gwynt windfarm would be located outside the SSAs identified by TAN 8. We note the objective in TAN 8 that ‘outside the SSAs, the implicit objective is to maintain the landscape character i.e. no significant change in landscape character from wind turbine development’. TAN 8 also states that ‘most areas outside of SSAs should remain free of large wind power schemes’ and goes on to note that ‘there is a case for avoiding a situation where wind turbines are spread across the whole of a county’. There are three SSAs in proximity to the proposed development site, namely SSAs B, C and D. Two of these have operational windfarms and all have windfarm schemes in planning or development. Given the scale of the development in the nearby SSAs, we have serious concerns about the further development of large scale windfarms in the areas between the SSAs which will further extend the development of a windfarm landscape.

There appears to be uncertainty as to the feasibility of the route of the grid connection proposed in the ES. The Mynydd y Gwynt windfarm does not have a contracted connection with Scottish Power Energy Networks (SPEN) and the project’s potential capacity has not been taken into account when planning the new proposed 132kV lines being promoted by SPEN. Further information and assessment is therefore required on the consequences of consenting this windfarm on the need for further upgrades to the Mid Wales electricity system and on the potential for cumulative impacts with other grid lines and windfarms. The proposed new grid network has been planned to service the SSAs which means that development of new windfarms away from these areas requires additional grid connections....

113. It is clear that NRW raised at the outset of its consultation on the first page of its response: a) that the passage of time should be taken into account in considering the views expressed by previous discrete components (such as CCW) now forming part of a wider and new entity – NRW; b) serious concern about the scale of the MyG proposal; c) the grid connection and cumulative impacts; and d) that further information and a dialogue was encouraged pre-application.
114. Notwithstanding the helpful comments provided by NRW in its 7th July 2013 letter, and Annex 1, which invited a dialogue before submission by the Applicant on a number of matters *before* it actually submitted its DCO, the Applicant consulted with NRW as follows. This email, dated 16th August 2013, included as follows:

Dear [Dr] Carol [Fielding]

Thank you for your response to the S42 consultation for the Mynydd y Gwynt wind farm proposal, dated 8th July 2013. Each consultant responsible for a chapter is in the process of responding to your letter in some way. In terms of the landscape and visual impact comments I have found them to be really useful and are enabling us to draft our final LVIA. I will in due course write setting out how we have taken on board all of your comments. In the interim, I would like to ask you for clarification over a number of

points that you raise through paragraph 28 with regard to the presentation of the visualisations, and thought the best medium was by way of an email.

Para 26: With regard to some of the viewpoints being located in slightly different locations from the original CCW request, please will you confirm that you are referencing:

- 5 Rhy y Benwsch on Severn Way
- 12 CCW view from Sustrans Route
- 13 Wye Valley walk/ A44
- 20 Glydwr's Way
- 25 A485 South of Lledrod

We will endeavor to re-photograph these locations next week.

Para 28: We would like to issue the final viewpoints to you and other consultees with a particular interest in landscape and visual impacts in printed A2 format (over 130mm image height) and a high-resolution digital format so that you are able to view on paper and screen, meeting para 129 of the SNH guidance.

“The image height and width will relate to the viewing distance and vertical and horizontal field of view chosen. However, if a short viewing distance and a small vertical field of view is selected, the resulting image may not be large enough to show sufficient detail. To avoid this situation, the University of Newcastle (2002) stated that “an image height of approximately 20 cm is therefore to be preferred”. However, following the University of Newcastle’s own recommendations in terms of a minimum viewing distance of 300mm and the use of a 50mm equivalent camera lens, the maximum vertical height of an image generated from a horizontal format photograph (landscape format) would be 140 mm. Once cylindrical projection (discussed in Appendix B) is applied this is further reduced to 135mm at the edges and may be further reduced if the image was cropped in scanning. Thus, while an image height of approximately 200mm is recommended, an image height over 130mm is considered acceptable.”

We are willing to issue printed versions at A1 to obtain a 200mm image height if required by NRW, however, images of this size can be difficult to handle.

Would this be an acceptable approach?

With kind regards, Anne

115. Further advice sought was limited to some sporadic emails and limited correspondence:

| | |
|-----------|---|
| 12/8/13 | email from MYG to NRW providing methodology used to prepare peat contours |
| 29/11/13 | email from MYG requesting details from NRW of the rally pollution event |
| 4/12/13 | email from MYG with query about collision risk assessment |
| 27/1/13 | email from MYG consulting NRW on the draft HRASR |
| 5/2/14 | letter from MYG consulting NRW on species licensing |
| 21/2/14 – | email from MYG consulting NRW on the revised carbon balance assessment |
| 10/4/14 | letter from MYG on the HRASR |
| 9/5/14 | letter from MYG regarding species licensing |
| 9/6/14 | email from MYG to say project withdrawn from PINs |

116. There was an un-minuted meeting with NRW about HRA on 11th March 2014 (and an unrelated enforcement meeting concerning a pollution incident on the River Wye connected to the landowner’s rally use of the site).

117. Subsequently, after almost a year's limited contact with NRW, on 30th July 2014, the Applicant applied for the current DCO and the Applicant emailed NRW on 20th August 2014 to confirm the re-submission of the Application. No other advice was sought by the Applicant before DCO submission.

UPDATE: CUMULATIVE IMPACT AND NANT Y MOCH ‘PROJECT’

118. By contrast with the Applicant’s failure to undertake an ‘in combination’ assessment for its DCO proposal and to now seek to rely upon terms of a Requirement (and it is for the Secretary of State to consider in light of Triton Knoll whether such a Requirement should be imposed or the Application refused), the Applicant has also failed to undertake a ‘cumulative impact’ assessment of a relevant and important project on the other side of Pumlumon: a currently registered NSIP for a wind farm in a designated Refined Area (SSA D).
119. NRW notes that the Applicant has recently declined to undertake a cumulative impact assessment of Nant-y-Moch notwithstanding that the Applicant has previously undertaken cumulative impact assessments and currently excludes it from account in its assessment.
120. NRW notes that, for HRA purposes, PINS classifies registered NSIPS as “projects” and, there is consistency in the EU’s approach with cumulative assessments under the EIA Directive.
121. In this respect, the Nant-y-Moch wind farm is a registered NSIP. See:
<http://infrastructure.planningportal.gov.uk/projects/wales/nant-y-moch-wind-farm/>
122. The Nant-y-Moch wind farm grid connection is also a registered NSIP. See:
<http://infrastructure.planningportal.gov.uk/projects/wales/nant-y-moch-wind-farm-grid-connection-project/>
123. The Nant y Moch windfarm NSIP has been subject to three rounds of section 42, Planning Act 2008 consultation.
124. PINS request that *registered* NSIPS be included in HRA in-combination assessments and the HRA definition of “project” adopts the EIA Directive scope of “project”. Therefore, logic dictates the categorisation of Nant y Moch as an EIA “project” on the reasonable basis set out above.
125. The Environmental Statement concerning the Nant y Moch proposal is in the public domain. That ES includes 2 plans as follows:
 - a) Figure 3-4: FCW Tender Layout, dated May 2012, shows the potential development area (i.e. SSA D – unrefined) and the FCW land available to *lease*, and also the ‘FCW Turbine Layout’ as at October 2007. This Figure is attached at **Appendix 3** to this Submission. Within Figure 3-4 can be seen in the lower right hand corner the location of Plynlimon Fawr. The MyG DCO proposal would be to the lower right of the Fawr;

b) Figure 3-12: Final Site Layout, also dated May 2012, shows the potential development area but with the ARUP Refined SSA D boundary showing to scale a smaller area than SSA D together with the locations of some 62 wind turbines in certain locations inside of the (now) Refined SSA D. This Figure 3-12 is attached at **Appendix 4** to this Submission. Within Figure 3-12 can be seen in the lower right hand corner the location of Plynlimon Fawr. The MyG DCO proposal would be to the lower right of the Fawr.

126. So far as *pursuit* of the project is concerned, rather than whether or not there *is* a project (required to be considered in cumulatively with the Applicant's DCO proposal), on 24th April 2015, an option for the foregoing *lease* and its area was transferred by SSE to Vattenfall of land Nant y Moch for the development of that demised area for a windfarm. See :

a) <http://naturalresources.wales/energy/wind-energy/?lang=en>

b) <http://sse.com/whatwedo/ourprojectsandassets/renewables/NantYMoch/>

127. The NRW website further explains:

Nant y Moch

Developer – Vattenfall

Due to unanticipated lengthy planning processes and uncertainty over major grid infrastructure, SSE were not confident the project could be delivered in a timeframe that would make it financially viable for them.

SSE have therefore exercised their right under the Option Agreement for SSA D (area known as Nant y Moch) and assigned their Option to Vattenfall. Nothing is likely to happen for 18 months and is dependent on the outcome of the Mid Wales Planning Inquiry and subsequent availability of a grid connection. Vattenfall in essence have a clean canvas to work with within the area covered by the Option Agreement.

NRW looks forward to working closely with Vattenfall with whom we have a proven working relationship since 2007 at Pen y Cymoedd in South Wales.

NRW also wish to acknowledge the professional legal service provided by Eversheds to complete this assignment.

128. NRW notes that, whilst the press release explains that progress of the project may be slow for a period until about 2017, the development of wind farms of significant scale is already *accepted* by the terms of TAN 8 within the geographical area of the TAN 8 SSA D, and in particular, (bearing in mind EN-3 and paragraph 2.2.2), within the now refined SSA D geographical area. In consequence, it may be reasonably considered that, the coincidence of: a) the option to lease an area within the refined SSA D boundary; b) the foregoing ES figure layout scale plans; c) the registration of the 'project'; provides a manifestly reasonable basis from which to properly assess the impact of MYG *cumulatively* with the currently proposed Nant y Moch windfarm.

129. The implications of the foregoing are explained in Simon White’s evidence. Put simply, the observer standing on Plynlimon (for example, within the Cairn at its summit) would foreseeably observe: a) to the north-west a wind farm of significant scale (and which TAN 8 and refined SSA D accept of such a scale; and turning about 180 degrees, b) if the current DCO for 27 turbines at Mynydd y Gwynt is authorized, to the south-east would also include up to 27 wind turbines. Thereby, as Mr White has explained in his expert evidence, Plynlimon would become a beacon in a *wind turbine landscape* as opposed to a beacon in a *landscape which contains wind turbines*. That is, *because* the geographical area of the Refined SSA D is subject to a policy *acceptance* of significant landscape character change (by reason of large scale wind turbine development) the *current* DCO at Mynydd y Gwynt outwith that Refined Area operates as a ‘tipping point’ in the actual balance of ‘landscape vs wind turbine’ content of the landscape. It is for reasons such as this, for example, that Mr White concludes in his expert opinion that this particular Mynydd y Gwynt application is “so damaging” (in the language of EN-1, paragraph 5.9.15¹).
130. Whilst EN-1, paragraph 5.9.16 addresses “temporary” impacts, the guidance example of “temporary” is “such as during construction”. By contrast, and in the context of EN-1, the actual presence of the DCO 27 turbines for 25 years is far from “temporary”. Within that 25 year period, many thousands of people may be expected to visit the particular confluence of Plynlimon and the sources of the Rivers Severn and Wye and their experience and memories will be actually changed and recalled as such for some many years after 25 years have elapsed. Within the 25 year period, this particular confluence of locations will remain subject to, in NRW’s view, significant adverse landscape and visual impacts.
131. NRW has attached a document from Simon White that assists in clarifying his position in light of the Applicant’s responses (see **NRW Response on Landscape and Visual Amenity, Deadline X, 14 May 2015**).

¹ EN-1, paragraph 5.9.15 states: “The IPC should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.”