

Review of the Brechfa Forest Connection Project

No Significant Effects Report (NSER)

(17 March 2015)

The information contained within this note is in response to a request from Western Power Distribution (the applicant) on 9 March 2015 for the Planning Inspectorate (the Inspectorate) to review informally the draft No Significant Effects Report (NSER). The Inspectorate understands that the draft NSER has also been issued for comment to Carmarthenshire County Council (CCC) and Natural Resources Wales (NRW).

The Inspectorate welcomes the opportunity to comment on draft documents as this enables us to provide advice about any omissions or potential procedural risks for the acceptance or examination stages. This advice forms parts of our pre-application service, details of which are available in the Inspectorate's pre-application prospectus which outlines the structured and facilitative approach to support that the Inspectorate can offer during the pre-application stage.

The Inspectorate's comments on the applicant's draft NSER are set out below. These comments provided are without prejudice to any decisions taken by the Secretary of State during acceptance or by the Examining Authority during examination, if the proposed development is accepted for examination.

These comments are not a detailed review of the draft NSER and its findings, but are a high level review intended to provide helpful comments/observations as appropriate.

Please note that reference to 'European sites' within this document is to Special Areas of Conservation (SAC), candidate SACs (cSAC), Special Protection Areas (SPA), Sites of Community Importance (SCIs), potential SPAs (pSPA) and Ramsar sites.

General Comments on the NSER

The Inspectorate recommends that the NSER be reviewed by the applicant to address the absence of evidence contained within the report to support statements and conclusions made. At present the NSER lacks detailed information and evidence to support statements and conclusions. For example, the NSER does not explain why certain study areas have been selected; most importantly, neither does it explain why certain qualifying features of European sites have been screened out. Further information should be provided on all qualifying features for the European sites.

The NSER relies on embedded design measures as mitigation; however, it is not clear how these measures are to be secured through the DCO, such that they can be relied upon for the conclusion of no likely significant effects. Statements

are also made to describe consultations with NRW; however, no evidence has been provided of these consultations and any agreements reached.

The Inspectorate recommends that the comments of the Inspectorate below be taken into consideration and addressed, as appropriate, prior to the DCO application in order to ensure sufficient information is provided for the acceptance stage and to address items that may otherwise result in further information requests during the examination.

Introduction (Section 1.1 of the draft NSER)

The NSER describes the Carmarthen Bay and Estuaries SAC as being located 7km downstream of the proposed crossing point of the River Towy/Afon Tywi. The applicant should set the context and confirm the proximity of this SAC to the proposed development as its closest point. Other than the crossing of the River Towy/Afon Tywi, consideration should be given to whether there any other pathways to the Carmarthen Bay and Estuaries SAC and justification provide for the outcome.

Paragraph 1.1.4 includes a number of bullet points identifying the current status of each HRA activity. As the majority of the status updates refer to consultations which will take place prior to the DCO application, these will require amending for the final NSER. The Inspectorate recommends that the comments be updated to describe the consultations that have taken place, including references to consultation responses and where these can be found. The Inspectorate recommends that consultation responses be appended to NSER.

Paragraph 1.1.4 refers to the screening matrices in Section 1.5 to the NSER; however, the full matrices are presented in Annex B. The Inspectorate recommends Annex B also be referenced at this point.

Paragraph 1.1.5 describes a study area of 2km. It is unclear why a study area of 2km has been selected. The methodology used to determine which European sites have been considered within the assessment has not been provided. The Inspectorate recommends that the applicant provide further explanation for the selection of the 2km study area. This study area is in conflict with the study area/zone of influence in relation to European sites: Carmarthen Bay and Estuaries SAC is described in the NSER and is stated as being located 7km downstream from the proposed development.

Paragraph 1.1.7 states that Figure 2 presents the survey area for otters; however, this figure presents the survey findings only and not the extent of the survey area. The text describes a survey area of 100m up- and downstream of the point where the proposed development crosses the watercourse. It is not clear from the text whether the surveys were only undertaken 100m up- and downstream of the River Towy/Afon Tywi crossing point or 100m from all

watercourse crossing points. It would appear from Figure 2 that the surveys were undertaken over an area wider than the River Towy/Afon Tywi. The Inspectorate recommends that further information and clarification should be provided concerning the otter surveys.

Designated Sites (Section 1.2 of the draft NSER)

The Inspectorate notes that the European site citations are currently missing from Annex A to the NSER. These should be provided with the NSER submitted with the DCO application.

The NSER is focused predominantly on potential likely significant effects on the European sites in respect of twaite shad and otters, and also in more general terms in respect of pollution events. Although the NSER lists the qualifying features of the two European sites (Afon Tywi SAC and Carmarthen Bay and Estuaries SAC) in Section 1.2, no specific information is provided to explain whether the other qualifying features, such as other qualifying fish species or the Annex I habitats, would be affected by the proposed development. It is unclear from the NSER whether the qualifying fish species of the SAC have been recorded in the tributaries of the SAC and how these qualifying species may be affected by the proposed development (such as through disturbance). The Inspectorate recommends further information is provided concerning other qualifying features and how these have been considered in the assessment.

The NSER includes a summary of the conservation objectives for the two European sites discussed. It is noted that the list of objectives provided for the European sites is not comprehensive and does not include the species-specific conservation objectives for these sites. Conservation objectives are not necessary for conclusions of no likely significant effects; however, should an assessment of adverse effects on site integrity be required, the Inspectorate would expect to see the conservation objectives presented in full in the HRA report (for example, as an annex). The Inspectorate recommends that the full conservation objectives be included in the NSER in the event that further assessment is required.

The Inspectorate notes that a hyperlink has been provided to the conservation objectives; however, this link is to the CCW homepage (currently retained by NRW). The Inspectorate advises that a specific link is provided to the document containing the conservation objectives, as it is not easy to find the conservation objectives from this link.

Paragraph 1.2.12 describes records of otters on the River Gwili. The location of this river and its status has not been described in the NSER and it does not appear to be identified on the Figures to the NSER. The Inspectorate recommends that further explanation be provided concerning the location and status of this river. The applicant may also wish to identify this river on the accompanying figures.

As described above, Paragraphs 1.2.14 and 1.2.15 refer to twaite shad and otters only. Further information should be provided to describe the presence/absence of other SAC qualifying species in the River Towy/Afon Tywi and tributaries affected by the proposed development.

The Inspectorate recommends that the applicant provides evidence of the agreement of the relevant statutory nature conservation bodies with the European sites and qualifying features that have been identified for inclusion in the assessment.

Assessment of Likely Significant Effects (Section 1.3 of the draft NSER)

Construction

This section describes the proposed works, including reference to Horizontal Directional Drilling (HDD). The NSER states that the cable will be installed under the River Towy/Afon Tywi using a HDD technique. The Inspectorate notes that the draft DCO submitted to the Inspectorate on 9 February 2015 does not describe the technique of HDD to install the cable under the river. The applicant should ensure that any design technique or mitigation relied upon for the purposes of the NSER conclusion is secured through the draft DCO.

Paragraph 1.3.1 describes an area as the Towy Valley; however, the extent of this area has not been explained or shown on a figure. It is unclear whether this area includes the tributaries of the River Towy/Afon Tywi and also, whether the tributaries would also be subject to HDD. The Inspectorate notes from Paragraph 1.3.4 that the crossing of the tributaries may use open cut methods or HDD. Figure 2 should show clearly where open cut methods and HDD is to be used and this should tie in with the draft DCO. If flexibility is being proposed, the NSER should consider both techniques and explain the worse-case scenario.

It is apparent from the survey data presented on Figure 2 that otters use the tributaries of the River Towy/Afon Tywi; however, the NSER does not explain whether the tributaries also support the migratory fish for which the SACs have been designated. The applicant should clarify this in the NSER.

Paragraph 1.3.2 refers to approximate areas and broad ranges of areas for compounds and working areas. The applicant should ensure that a worse-case has been considered for the assessments, including consideration of any limits of deviation proposed in the draft DCO.

Paragraph 1.3.3 refers to all trenching works being contained within a 16m wide corridor. The applicant should explain how this restriction will be secured in the draft DCO, if relied upon for the assessment of no likely significant effects.

Paragraph 1.3.5 describes that to avoid disturbance to twaite shad, HDD of the River Towy will take place outside of the migratory period for this species (April to June). The Inspectorate advises that for this timing of works to be relied

upon for the purposes of screening out likely significant effects, the mitigation must be secured. The Inspectorate notes that restrictions to the timings of HDD works are not included in the draft DCO of 9 February 2015 and the Inspectorate advises that this should be addressed. The applicant may also wish to consider timing restrictions in relation to other qualifying species of the European sites.

With regard to Paragraph 1.3.6 concerning otters, it would appear from the draft DCO that pre-construction surveys are proposed for otters and therefore, it would be appropriate to describe the pre-construction surveys for otters in the NSER and explain how these will be secured.

Paragraph 1.3.15 refers to restrictions to the timing of works in watercourses, where no works will take place within a watercourse between 15 October and 15 April, to avoid any risk to spawning salmonids (salmon, trout and grayling). The NSER acknowledges that these are not qualifying features of the European sites and that further detail is provided in the Environmental Statement. The Inspectorate notes that no restrictions on timing of works are included in the draft DCO. The Inspectorate could not find reference to these timing restrictions in the draft Construction Environmental Management Plan (CEMP) (NB. the Inspectorate has not reviewed the draft CEMP in detail). The applicant should consider how these restrictions are to be secured in order that they may be relied upon.

Operation

The NSER does not identify any potential effects as a result of the operational phase of the proposed development. Given the importance of the River Towy/Afon Tywi for fish species, the applicant should consider the generation of electromagnetic fields from the operation cable and the effects these may have on fish. Paragraph 1.3.2 states that the HDD would be located a minimum of 1m below the bed level of the River Towy/Afon Tywi. The Inspectorate cannot, however, find reference to the depth of the HDD below the bed of the River Towy/Afon Tywi being secured through the DCO. The applicant may wish to discuss the potential effects considered in the NSER with NRW for both the construction and operational phase of the proposed development.

In-combination Effects (Section 1.4 of the draft NSER)

Section 1.4 of the draft NSER states that a full list of projects considered for the in-combination assessment is presented in the ES. The Inspectorate cannot comment on the projects or plans considered in-combination with the proposed development in the absence of this information. The explanation provided as to why projects have been screened out is limited and the Inspectorate therefore recommends that further explanation be provided to explain how each of the projects identified in the ES have been screened in and out of the HRA assessment for likely significant effects in-combination with the proposed development.

The Inspectorate notes that a 2km study area was selected for the in-combination projects; however, the reasons for selecting this study area have not been provided. In addition, no evidence has been provided to demonstrate any agreement with NRW with regards to the study area and the overall approach to the in-combination HRA assessment. The Inspectorate recommends that an explanation be provided as to why this distance was selected. The applicant's attention is also drawn to the guidance on page 8 of the Planning Inspectorate's Advice Note 10 in relation to in-combination effects on European sites, including those projects and plans recommended for consideration by the Inspectorate.

The screening matrices (Annex B)

Two screening matrices have been provided as Annex B to the NSER. The Inspectorate notes that the matrices have been used as the primary method to present the outcome of the NSER on select qualifying features (such as the Annex I habitats of Carmarthen Bay and Estuaries SAC).

The matrices currently contain the instruction text from the Inspectorate's template. The matrices need editing and it is advised that the matrices be amended to delete superfluous instructions and make specific to the NSER for the proposed development. At present the evidence for the conclusions is included as brief text within the matrices. In accordance with Advice Note 10, the Inspectorate recommends that the evidence for the conclusions be included as footnotes to the matrices. All footnotes should contain a robust justification to the conclusion drawn with cross reference to specific paragraphs in other application documents as appropriate (i.e. either to the NSER itself or specific paragraphs of the ES).

The assumptions in the matrices should all be fully evidenced and the Inspectorate advises that the matrices should be carefully checked to ensure this is the case in the final version. The matrices do not contain a separate row for each qualifying feature of the two SACs. For example, the River Towy/Afon Tywi SAC includes a row for 'include all features for the site', which includes statements such as 'Disturbance can be avoided for all features of the site through specified timing of works'. It is unclear what qualifying feature is being referred to in this row and no detail is provided on these timings or how they would be secured. The Inspectorate recommends that the applicant amend the matrices to include all qualifying features, with evidence provided as footnotes, including signposting to the evidence in the NSER or other application documents, as appropriate.

The applicant is also requested to provide both a PDF and Word copy of the matrices with the DCO application.

Mitigation

Mitigation in the draft NSER refers to that embedded in the scheme design, such as HDD and timing of works. Reference should therefore be made to the draft DCO, including any relevant requirements, which secure this mitigation. For ease of use during examination, the Inspectorate would find it helpful information concerning mitigation is provided in a Table.

The NSER also places reliance on mitigation measures that would be delivered through a CEMP for the project (for example, pollution control measures). Reference is made in the NSER to a detailed methodology for the crossing of the River Towy/Afon Tywi and tributaries to be discussed and agreed with NRW. It is unclear from the draft DCO currently held by the Inspectorate what this detailed methodology would entail and how it will be secured through the DCO. The Inspectorate recommends that the NSER include clarification as to how this will be secured. In addition, a Frac-Out Contingency Plan is identified in the NSER. This needs to be explained and the applicant should also clarify how this will be secured.

Where reference is made to accepted mitigation from adherence to best practice guidelines these should be fully explained and detailed in the CEMP and draft requirements in the DCO, as appropriate.

Consultation with Natural Resources Wales

The Inspectorate notes that the draft NSER makes reference to consultation with NRW on 2 October 2014 and understands that the draft NSER has also been submitted to NRW recently for comment. It is recommended that any consultation or agreements made between the applicant and NRW are recorded within the final NSER as they apply at the time of submission of the application. This would include consultations and agreements, as appropriate, on mitigation measures, including those which may be included in the draft CEMP.

The Inspectorate recommends that agreement is sought with NRW regarding the qualifying features of European sites and the potential effects to be considered on these. It is also recommended that agreement be sought from NRW concerning the developments have been included in the in-combination assessment and the conclusions of the in-combination assessment.

Presentation

The document uses Welsh and English names interchangeably in relation to rivers (e.g. Afon Tywi/River Towy and River Gwili/Afon Gwili). The Inspectorate recommends that the report be consistent in their use. For example, it is noted that the NSER refers predominantly to the river in the English form River Towy, with the exception of the SAC, which is referred to in its Welsh form only.

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