



**Cyfoeth
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Wales**

Our Ref: 1880965
Your Ref: P2014 0672

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Mr Gwilym Davies
Powys County Council Planning Department
The Gwalia
Ithon Road
Llandrindod Wells
Powys
LD1 6AA

22nd December 2014

Dear Gwilym

P2014/0672 Full: Construct and operate 7 wind turbines with a maximum tip height of 110m and maximum hub height of 69m together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hard-standing and temporary compound and associated works at Hendy, Llandegley, Powys.

Thank you for consulting Natural Resources Wales on this application. This letter is NRW's response to the consultation letter dated 18th July 2014.

NRW note that this is a proposed development for 7 wind turbines, 110m to blade tip that lies outside a TAN 8 Strategic Search Area for major wind farms.

NRW agree with the findings of the Landscape and Visual Impact Assessment, which indicate there would be significant landscape and visual adverse effects within 5 km of the proposal over an area extending in an arc clockwise from the North to the South west of the site. We also advise that there would be significant adverse effect upon the viewpoint at Gwaunceste Hill. Therefore, NRW advise that the proposed development would have significant adverse regional effects upon landscape and visual resource. We also note that the LVIA has not considered the impact of infrastructure associated with this scheme namely roads and grid connection. We would have expected this to have been considered in the LVIA.

However, NRW can confirm that no nationally designated landscapes will be impacted by this development.

Natural Resources Wales objects to the application on the grounds of:

- **lack of a transparent Habitats Regulations Assessment for the River Wye SAC.**



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Our detailed comments are set out below in Annex 1. Please contact me if you wish to discuss the contents of this response further.

Yours sincerely



Caroline Moscrop
Team Leader, Radnor & North Brecknock

cc Fran Iribar, Viento Environmental
Aidan McLernon, Cunnane Town Planning



Annex 1

Two operational small wind turbines 14m to hub height lie at 1km and 2.5km to the south of the proposed Hendy wind farm site and one turbine 21m high to rotor tip lies at 3.5km to the north.

The site of the Pentre Tump wind farm proposal for 3 turbines 110m high to rotor tip, lies 6km to the south east of the Hendy proposal and was dismissed at appeal (Planning Inspector's report January 2014).

Landscape and visual assessment

NRW generally concur with the LVIA methodology and assessment of predicted effects, but are concerned that the LVIA underplays the significance of effects upon views from some locations; the effects upon landscape character as a result of the associated infrastructure of access road, substation and grid connection have not been given sufficient discussion and assessment; the representation of the development illustrated within the photomontages does not include the associated infrastructure or worst case viewing conditions; and the scope of the cumulative impact assessment needs revisiting following the appeal dismissal of the Pentre Tump development.

LANDMAP evaluates the visual and sensory landscape resource of the area to be of local value (Moderate) for the plateau landscape where the site is proposed and of regional value (High) for the high scenic quality of the adjacent upland hills and ridges of Radnor Forest and Gwaunceste Hill. We also consider Llandegley Rocks to the north of the site to be of high scenic quality – higher than assessed by LANDMAP, which in considering a more extensive area of landscape at level 3 assessment, has averaged out and in this case underplays the scenic qualities of the northern extent of this area. These qualities are experienced within views from the A44 and wider public rights of way network to the north east and east.

Irrespective of the overall landscape evaluations - attractive views, tranquil, exposed, remote, wild and spiritual perceptual qualities can be experienced across the area. Traditional upland and lowland farmed rural character, limited landscape change and lack of modern development is both evident within views of the area and also conferred by LANDMAP historic landscape evaluation, which is of national value (Outstanding) in the area of the site and of regional value (High) for much of the remaining area.

There are frequent locations within the area from which local and middle distant views of the development would be possible, including the public right of way network (strong regional recreational network of routes including byways open to all traffic, bridleways, footpaths and open access land); Sustrans National Cycle Trail 825; the A44 (major route used by local communities and visitors to Mid Wales from the English Midlands) and A481



(major route used by local communities). Many of these routes have elevated vantage points, above the more visually enclosed field pattern of the valleys and would allow open and prolonged views of the development. The scale and prominence of the development would create a new landmark in the landscape, with movement from rotor blades which attract attention and in the worst cases control and command views.

NRW consider the landscape and visual sensitivity of the area, which includes valued perceptual qualities of ridges and uplands of high scenic quality; attractive views, tranquility and historic landscape integrity across much of the area; and the areas access and openness to views from the public right of way network, open access land, national cycle trail and main roads; is a context within which the proposed development cannot be accommodated without significant adverse regional scale effects.

Ecology

Protected sites (SSSI and SAC)

The ES¹ states that “the scheme lies within 3km of one internationally-designated site, the River Wye Special Area of Conservation (SAC), and this raised the requirement to consider the proposal in terms of its effects on the site. Full consideration was given to this and it was concluded that there would be no effect.” However the ES does not give any details of how this conclusion was arrived at. There are watercourses within the site that drain into the River Wye SAC, providing a hydrological link to the SAC.

Due to the proximity to designated watercourses, the project will need to be considered under the Conservation of Habitats and Species Regulations 2010 (as amended). Given the current information available to us NRW would advise that the project is likely to have a significant effect on the European site and a Habitats Regulations assessment is required. The HRA will need to rely on many of the mitigation measures in a Construction Environmental Management Plan (CEMP) and we advise that a draft CEMP is provided at the pre-application stage for comment and to support the HRA.

Caeau Coed Mawr SSSI, Graig Fawr SSSI and Howey Brook Stream Section Sites of Special Scientific Interest (SSSI) are within 3 km of the site boundary. NRW does not consider there is the potential for these SSSI to be adversely affected by the proposal because of the distance between the application site and the SSSIs and/or because the features of the sites are not sensitive to windfarm development.

¹ Non-technical summary, page xii



Protected Species

Protected Species Protection Plan

NRW advise that a Protected Species Protection Plan is provided by the applicant pre-determination, which could be incorporated into the Construction Environmental Management Plan, to guide the Ecological Clerk of Works.

Regulation 9 (3) of the Conservation of Habitats and Species Regulations 2010 (as substituted) requires public bodies in exercising any of their functions, to have regard to the requirements of the 1992 'Habitats' Directive (92/43/EEC) and the 2009 'Birds' Directive (2009/147/EC) so far as they may be affected by the exercise of those functions. Our advice is given in accordance with Regulation 9(1) of these regulations under which we are required to exercise our functions so as to secure compliance with the Habitats and Birds Directives.

The presence of a protected species is a material planning consideration under the provisions of Planning Policy Guidance Wales and Technical Advice Note No. 5. The applicant has consequently undertaken survey and assessment to inform the decision making process. We are generally satisfied with the surveys undertaken, which show that the site supports species protected under the provisions of the Wildlife and Countryside Act 1981 (as amended); the EC Habitats and Species Directive (as implemented by the Conservation of Habitats and Species Regulations 2010 (as amended)). In this case bats and great crested newt are the species considered most likely to be affected by the proposal. The proposal has the potential to cause

- (i) Disturbance, killing or injury to newts and/or loss or damage to terrestrial habitats during the construction phase of the proposal; and
- (ii) killing or injury to bats during the operation phase of the proposal

Bats

The surveys confirmed that several bat species were recorded within and in the environs of the application site, In NRW's view, the assessments and conclusions on Myotis species of bat are satisfactory. In respect of assessments, limited contextual information was provided in the ES.

Both Soprano and Common Pipistrelle were recorded. Of these, Soprano Pipistrelle appears to be the species most likely to be affected by the scheme. Relatively low numbers of bats were recorded. However, only limited contextual information was provided in the ecological submission.

Of the species recorded, Noctule bat is considered to be of highest risk in terms of possible impacts.



Noctule bat was recorded at 5 surveillance points and the maximum number of passes was 16. Numbers of passes was suggested as being low. It was further suggested that passes could be a single individual bat. However, typical size of a Noctule roost may be between 20-30 bats and only limited contextual information was provided in order to assess the scheme in terms of impact on conservation status.

NRW advise a condition requiring surveillance, and if impacts are subsequently detected, the requirement of curtailment as a contingency measure or prescription. Bat mitigation measures should be included in the Protected Species Protection Plan, which should also confirm that turbine blade tips are a safe distance from habitat features, in line with current guidance.

Great Crested Newt

Owing to the presence of a population of great crested newt on the application site, we advise that development proceeds under a licence issued by NRW, who is the appropriate authority responsible for issuing licences under Regulation 53 (2) (e) of the above Regulations. This licence can only be issued for the purposes of: "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment." Furthermore, the licence can only be issued by NRW on condition that there is: "no satisfactory alternative", and that "the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."

In our view the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of great crested newt, provided that any consent is subject to the imposition of planning conditions or obligations in respect of the following: a. Submission and implementation of an approved reasonable avoidance scheme to the satisfaction of the LPA. We advise this scheme needs to include measures that will be undertaken during the construction phase of the scheme.

Otter

The environmental assessment showed that Otters use the site, particularly the River Edw corridor. The ES does not adequately assess the magnitude and significance of potential impacts on this species. For example, the ES states that it is not considered that there is likely to be any serious disturbance to otter because otter usage of the site is largely after dark. However it is clear that construction activity is intended during hours of darkness. We advise therefore that further mitigation measures are detailed by the applicant, in the Protected Species Protection Plan, to avoid significant effects on otters.

Badger

A badger sett was recorded within the site. According to the ES², the badger sett is located at least 250m from proposed turbine locations, and access tracks would be located at least 75 m from the set. Therefore no significant impacts on badgers are expected as a result of the proposal. NRW advise that the mitigation measures for badgers included in the ES are included in the Protected Species Protection Plan. We would advise that a suitably worded condition is included in any planning permission your authority is minded to grant, for this plan to be agreed with the LPA in association with NRW.

Water Vole

Water voles are given full protection under Part I Section 9 of the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally or recklessly kill, injure or take this animal, damage, destroy or obstruct access to any place that it uses for shelter or protection or disturb it while it is occupying such a place. A licence is generally required before carrying out any activity which could lead to any of the above. Surveys were carried out for water voles but no signs were found. Owing to the protected status of water voles, suitable mitigation measures should be included in the Protected Species Protection Plan.

Birds

Curlew

Curlew was recorded as a breeding species in 2013, in two areas either side of the access track in the southern part of the site, in the vicinity of Pye Corner. Recent research has shown that displacement impacts on breeding curlew occur in particular during the construction phase of windfarm developments (Pierce-Higgins et al, 2012). The 2013 breeding territories were situated just over a km from proposed turbine locations; research indicates that displacement impact can occur up to 800m from construction areas. NRW therefore advise that, in order to ensure curlew are not impacted by the construction phase of the development, that pre-construction survey is carried out in the spring in order to identify the location of breeding curlew. If curlew are found within 800m of any construction areas, further consideration of mitigation measures will be required, focussing on avoidance of construction disturbance during the breeding season.

Other bird species

² ES Chapter 7. Ecology , page 7-62

Breeding survey visits, following Brown and Shepherd methodology, were carried out in 2012. The results of these surveys show low breeding activity for Barn Owl, Red Kite, Quail, Lesser Redpoll, Tree Pipit, Linnet, Song Thrust, Grasshopper Warbler and Willow Warbler. The ES³ concluded that the quality of the habitat on the majority of the site is poor for breeding birds, with the best areas located on the south-eastern and north-western boundaries and on the felled coniferous plantation.

A specific survey for Red Kites conducted during spring and summer 2012 found that two or three pairs of Red Kite were suspected to be breeding within a 2 km buffer zone from the core study area.

Winter walkover survey following Brown and Shepherd methodology revealed that Lapwing, Golden Plover, Snipe, Jack Snipe, Red Kite, Kestrel, Buzzard, Goshawk, Sparrowhawk and Starling were present on the development site. The latter occurs also as a large winter roost.

Vantage point surveys (VPs) were conducted according to Scottish Natural heritage (SNH) methodology and standard risk collision assessment methodology was employed for target species recorded within the collision risk window, these being, Golden Plover, Starling and Red Kite. The risk of collision is considered to be low or very low for all target species and the significance of the impacts on their populations is assessed as Minor (non-significant)⁴

The effects on birds as a result of the removal of habitat for the construction of the windfarm infrastructure are anticipated to be negative (moderate significance)⁵.

We note that the effects on birds due to displacement through indirect loss of habitat if birds avoid the windfarm area and surrounding land due to turbine operation, maintenance/visitor disturbance, and land use change that may happen as a result of improved access to the site with the construction of new track, have not been considered within the ES.

Pillwort

Pillwort Pilularia globulifera, a red data list plant, is present at Sarn Pool in the north of the site. It is a Nationally Scarce plant and is a section 42 species. The UK holds a significant proportion of the world population of this fern, which is endemic to Western Europe. The ES considers the pond therefore to be of County Level importance. Protection of this

³ ES Chapter 7. Ecology , page 7-33

⁴ ES Chapter 7. Ecology , page 7-66

⁵ ES Chapter 7. Ecology , page 7-61



important plant should be incorporated into the Protected Species Protection Plan, and cover maintenance of the current favourable conditions (including grazing regime and hydrological state).

Biosecurity

Biosecurity is a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern invasive non native species (INNS) and diseases. We therefore advise that any consent includes the imposition of a condition requiring the submission and implementation of a Biosecurity Risk Assessment to the satisfaction of the LPA. This assessment should include (i) appropriate measures to control any INNS on site; and (ii) measures or actions that aim to prevent INNS being introduced to the site for the duration of development and restoration.

Site Hydrology and Hydrogeology

Hydrological links between the development site and the River Edw, an important tributary of the River Wye, are identified in the ES. The River Edw supports features of the River Wye SAC, such as white-clawed crayfish. A Habitats Regulations Assessment is required, as discussed above.

The ES identifies the following potential effects on the hydrology and hydrogeology during the construction phase:

- disruption of natural flow pathways;
- damage of soils structures and changes to local soil hydrology;
- increased infiltration rates;
- erosion of expose ground;
- silt laden runoff entering in surface watercourses;
- pollution due to concrete residues and accidental spillages.

Some of those effects, such as erosion of track surfaces, disruption of natural flow and changes in the run-off characteristics of the site could continue during the operational phase.

Potential impacts due to soil erosion, accidental spillages and pollution on surface watercourses are identified and 20 m buffer zones are included in order to avoid works near watercourses. Additionally, Construction Method Statements shall be produced and approved by NRW prior to commencement of the works.

The ES includes the following mitigation measures in order to minimise impacts on hydrology during the construction phase:

- boggy areas will be avoided;
- control of drainage and provision of temporary drainage routes;
- use of silt traps, settlement ponds, implementation of impermeable barriers and installation of cut-off drains;
- suitable urban drainage systems incorporated into the designs of the tracks;
- use of a geotextile base to minimise compaction and drying out of materials;
- construction of suitable passages;
- work will follow SEPA/EA PPG and CIRIA guidance;
- timing of works to prevent working in wet conditions;
- scheduling construction activities to minimise area and period that soil will be exposed;
- revegetation;
- micrositting of turbine locations;
- use of sulphate-resistant concrete;
- use of best working practises.

The potential impacts on the hydrology of the site during the decommissioning phase are expected to be similar to those during the construction phase.

According to the evaluation of significance included in the ES⁶, all the residual effects after mitigation are assessed as negative non-significant or negative minor significance.

These measures should be incorporated into a Construction Environmental Management Plan and included as conditions in any planning consent given. Natural Resources Wales will advise the appropriate Authority on the adequacy of the final CEMP. It should include all measures taken to prevent detriment to the environment and any contingency plans with particular reference to the minimisation of pollution to watercourses from silt and storage of fuels and other hazardous materials. Current waste management legislation should be adhered to. New roads and tracks should be constructed in a way, and of material, that will ensure suspended soils are not washed off site and discharged into the water environment during heavy rain or storm events. Construction of tracks and turbines and how the control measures will be retained or amended over the lifetime of the development should be included in the CEMP.

⁶ Chapter 10 Hydrology and Hydrogeology, page 10-36



Peat

While the site has been shown not to support substantial areas of deep peat, NRW regards any potential damage to peatland habitats and carbon stores to be a significant issue. In line with section 42 (NERC Act 2006) priority species and habitats of conservation concern in Wales, we would expect that disturbance and/or destruction of peat would be avoided as far as possible, and where it was not possible, such impacts would be minimised.

Peat depth maps showing the extent and depth of peat deposits have been produced, which show that the overall depth of peat recorded was found to vary between shallow deposits to localised areas of peat, just over 1 metre deep. The ES states that the assessment of the impacts of the proposal on peat is not necessary because no construction is planned on peaty areas. The access track in the southern part of the site may pass close to deeper areas of peat but the scale of the figure makes it difficult to quantify.

Mitigation and Enhancement Measures

The Environmental Statement includes measures to avoid and mitigate for any significant adverse effects on the environment, including the micro-sitting of tracks to avoid sensitive areas and timing of the works outside the main bird breeding season. However, they have not been collated into a Habitat Management Plan for the development, representing a statement of intent for measures that will be implemented. NRW advise that this is required prior to determination. NRW advise that a Habitat Management Plan is produced, detailing measures for enhancement of the site, prior to determination.

Pre-construction surveys for bat, badger and otter shall be carried out to assess changes in the distribution and use of the site. All works shall stop immediately and NRW contacted for further advice if new otter holts and/or badger setts are located near the working areas.

A Species Protection Plan shall be agreed prior to commencement of the works, and an EPS license obtained when required.

A minimum distance of 20 metres between construction activities and water courses shall be maintained in order to avoid impacts on watercourses and associated habitats. Exposed pipelines adjacent to watercourses shall be capped at the end of each working day and trenches will be ramped in order to facilitate the exit of any animal that could be trapped in them. The speed shall be limited to 19mph for all construction traffic.



Monitoring and surveillance, during and post- construction

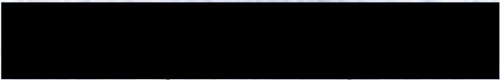
We recommended the inclusion of details of a monitoring programme covering all the natural heritage interests affected by a scheme through construction, operational & decommissioning phases of the development. We note that the ES⁷ states that a program of monitoring will be agreed with NRW prior to the development being commissioned but further detail is not provided.

Monitoring of the identified ecological features likely to be adversely affected must be linked to appropriate contingency plans and monitoring results should trigger the implementation of the relevant contingency measures identified in the various Environmental Management Plans (EMPs). Monitoring must be related to good quality recent and accurate baseline data and include controls. Monitoring should be started at an early stage in the project and be carried out over a sufficient length of time to demonstrate positive or negative trends. It may be necessary to amend construction procedures if the monitoring programmes identify adverse impacts linked to construction or post construction activities and NRW would wish to be consulted in such an event.

Natural Environment and Rural Communities (NERC) Act (2006)

Please note that we have not considered possible effects on all local or regional interests. Therefore, you should not rule out the possibility of adverse effects on such interests, which would be relevant to your Authority's general duty to have regard to conserving biodiversity, as set out in section 40 of the Natural Environment and Rural Communities (NERC) Act (2006). This advice includes any consideration of the planned provision of "linear" and "stepping stone" habitats. To comply with your authority's duty under section 40 of the NERC Act, to have regard to conserving biodiversity, your decision should take account of possible adverse effects on such interests. We recommend that you seek further advice from your authority's internal ecological adviser and/or third sector nature conservation organisations such as the local wildlife trust, RSPB, etc. The Wales Biodiversity Partnership's web site has guidance for assessing proposals that have implications for section 42 habitats and species (www.biodiversitywales.org.uk).

Yours sincerely


Caroline Moscrop
Team Leader
Radnor and North Brecknock

⁷ Non-technical summary, page xiii

ANNEX 2: EUROPEAN PROTECTED SPECIES - LEGISLATIVE PROTECTION

European Protected Species include:

- Great crested newt (*Triturus cristatus*)
- Common otter (*Lutra lutra*)
- all British bats

All European Protected Species and the places they use to rest and breed are legally protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 – the Habitats Regulations. The Habitats Regulations transpose the requirements of the Habitats Directive (Council Directive 92/43/EEC) into UK law.

Under Regulation 41 of the Habitats Regulations: -
A person commits an offence if he or she:

- deliberately captures, injures or kills any wild animal of a European protected species;
- deliberately disturbs animals of any such species;
- deliberately takes or destroys the eggs of such an animal; or
- damages or destroys a breeding site or resting place of such an animal.

Disturbance of animals includes in particular any disturbance which is likely:
To impair their ability

- to survive, breed or reproduce, or to rear or nurture their young, or,
- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;
or
(b) to significantly affect the local distribution or abundance of the species to which they belong.

Under S.9(4)(b) and (c) the Wildlife and Countryside Act 1981 (as amended):-
A person commits an offence if he/she intentionally or recklessly

- disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- obstructs access to any such structure or place.

Where the legal protection afforded European protected species under the Habitats Regulations is likely to be compromised by a proposed development, the development may



only proceed under a licence issued by the National Assembly for Wales (NAW). Under Regulation 53(2) of the Habitats Regulations, NAW may issue licences for the purposes of:

'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment.'

Furthermore, a licence can only be issued by NAW if the following two conditions are also met:

That there is 'no satisfactory alternative' (Regulation 53(9)(a)), and that: 'the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).

In addition, Regulation 9(5) of the Habitats Regulations confirms that all competent authorities, in exercising any of their functions, must have regard to the provisions of the Habitats Directive so far they may be affected by the exercise of those functions.

The principle consideration of any scheme that affects a European Protected Species is whether the plan or project is detrimental to the "Favourable Conservation Status" of the affected species. The Habitats Directive (Article 1 (i)) defines Favourable Conservation Status as:

- *"the sum of the influences acting on the species concerned that may affect the long term distribution and abundance of its population within the territory" and "favourable" when:*
- *"the population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitats,*
- *"the range of the species is neither being reduced nor is likely to be reduced for the foreseeable future", and*
- *"There is, or will probably continue to be, a sufficiently large habitat to maintain its population on a long term basis".*