



CAMPAIGN FOR THE PROTECTION OF RURAL WALES

APPENDIX 2. Full Response to HRA ASSESSMENT OF dNDF

(sections 1 & 2 are also entered into the response form)

1. Dating issues in HRA

- 1.1. The handling of HRA documents has been regrettable. The HRA was clearly not ready for consultation with the public. The original HRA documents presented for public consultation were incomplete, partially out-dated and did not include the essential evidence relating the refined Priority Areas (PAs) to Natura 2000/Ramsar sites (NK2/Rs) in the 8 maps now provided in APPENDIX B: Appendix B. The WG changed the documents for this legally required HRA process after the consultation began and without alerting the public. After our complaint, the consultation period was extended by a two-week period reflecting the date of the document change (21/8/19) rather than the later date on which the public were notified of the change (17/10/19).
- 1.2. This is the third Arcadis draft signed off on 1/7/19 of the assessment made on the dNDF dated 15/5/19 later described as “first draft of NDF” (p1). The dNDF for consultation is only dated by the consultation dates (7/8/19 to 1/11/19 - now extended to 15/11/19) so we do not know if the 15/5/19 version was the final dNDF.

2. General

- 2.1. The HRA is defined: “The consideration of the impact on the integrity of the Natura 2000 site of the project or plan, either alone or in combination with other projects or plans, with respect to the site’s structure and function and its conservation objectives”. With the three conditions (no alternative/IROPI/adequate compensation) governing consent in the case of significant likely effects on an NK2/Rs. The question is of whether it has fulfilled this remit.
- 2.2. The HRA report has a reasonable and clear structure. It describes clear set-back buffers for the site designations although the chough is the only species meriting a species-specific buffer. It sets out HRA requirements and screens the policies providing Appropriate Assessments for the 20 out of 33 Policies which are screened in. It provides a useful Rule of Thumb section. It claims that (p4) “Given the nature of the NDF, it is therefore the lower-tier plans which will include sufficient detail to allow for a meaningful assessment of the potential impacts that such development could have on Natura 2000/Ramsar sites. The HRA at this level of the planning hierarchy is therefore necessarily high-level and precautionary.”
- 2.3. It does not address the in-combination effects within Policy 10 and between policies within the NDF because, it claims, without any specific sites, these cannot be assessed for any particular NDF policy however, within Policy 10 at least some in-combination effects of neighbouring PAs in the same buffer zone(s) could be assessed..
- 2.4. It fails to address the in-combination effects between the NDF and other policies, programmes etc. For instance, it says (p17) that since the WNMarineP has been subject to HRA which found there was appropriate lower-tier, plan-level mitigating provision, this together with the wording of the NDF will provide protection to marine environments. We believe that, in as much as there are spatially defined policies in the WNMP, there should have been discussion of the possible in combination effects of a spatially defined policies on land and in marine areas. An example might be discharge of effluent at sea from increased development on land.
- 2.5. With respect to Policy 10, the first criterion of the DTA guidance is that “ a plan making body may only rely on mitigation measures in a lower-tier plan or project” if “the higher-level plan cannot reasonably predict any effect on a European site in a meaningful way”. Policy 10, in particular is a **spatially defined** policy carrying a presumption of planning approval in PAs. Therefore there is a fundamental issue of whether NK2/Rs will in fact receive the same level

of protection **with defined PAs** as they would have done **without defined PAs**. The report fudges this issue. The same applies, if in lesser measure, to some of the place/area specific policies (P17 - P33).

2.6. The Appropriate Assessments required by law do not discuss what types of mitigation or compensation are available or acceptable should the WG claim IROPI circumstances and the NDF itself confines discussion of specific measures to protect biodiversity interests to Policy 8.

2.7. This is an HRA of the NDF “**and the process by which it was derived**” (APPENDIX B p2). The HRA correctly, emphasises that the **evolution** of the NDF has improved the prospects for NK2/Rs however the evolution of the NDF Policy 10 involved the ARUP distinction between fixed and variable constraints which also governs the entire classification of the **areas of most opportunity** which themselves underlie the delineation of PAs. The implication of including (for instance) peat deposits and fresh water surfaces as variable rather than fixed constraints is not discussed.

2.8. We have already seen the Minister’s decision over Hendy Wind Farm, within the catchment of the Wye SAC, which is only 1 km away, accept an Appropriate Assessment based on generic construction precautions with no site-specific information and no consideration about the presence or migration of species, including white-clawed crayfish, as set out in this HRA.

(p 6) “Finally, whilst a buffer of 5km has been set for SAC habitats, wherever a riverine SAC is downstream of a proposed development, impacts associated with significant mobilization of sediment could extend further than this. This is less due to the fact that sediment is likely to travel further than this, and more because individual fish species associated with these sites can readily occur some distance upstream from the boundary of the designated river (e.g. in undesignated tributaries).”

Furthermore, the Appropriate Assessment considered that Planning Conditions were sufficient protection but the Developer has proceeded without discharge of conditions precedent and no action has been taken.

2.9. The HRA is primarily concerned with the spatially defined Priority Areas in Policy 10. For each screened-in policy apart from Policy 20 Holyhead port the HRA concludes “Consideration of the measures set out above during regional/local planning and during site-specific implementation of the policy, as well as compliance with P8 of the NDF (which it is anticipated will indirectly provide protective buffering for Natura 2000/ Ramsar sites by protecting and enhancing ecosystem services, ecological networks and biodiversity in the wider countryside), should ensure that there will be no adverse effect on the integrity of Natura 2000/ Ramsar sites as a result of implementing this policy”

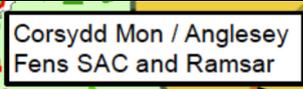
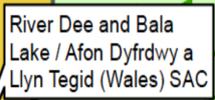
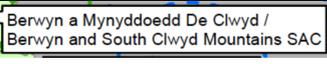
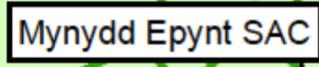
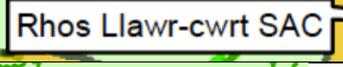
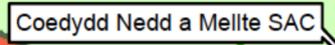
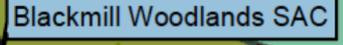
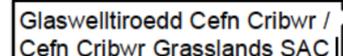
2.10. All the above leave an uncomfortable and serious doubt as to the level of protection which might emerge in practice.

3. HRA and the NDF

3.1. We do not know how much modification of the NDF is planned, or will emerge from this consultation. Arcadis advises (APPENDIX B p2) that the forthcoming EU guidance document on Wildlife Sensitivity Mapping (which they have helped develop) should be referenced in the NDF and ideally taken into account in **subsequent refinement of the PAs**. We argue elsewhere in our dNDF response that Policy 10 is not yet fit for purpose and should undergo revision before a further consultation.

3.2. APPENDIX B p15 says that risk to NK2/Rs has been reduced but not avoided and that buffer zones illustrate that a significant proportion of the area prioritised for renewables development does still lie **sufficiently close** to Natura 2000/ Ramsar sites that impacts could occur. These buffer zones (APPENDIX B –Appendix B Fig.2 Maps x 8) will “therefore be very important for informing the scope of subsequent **local plan**- and/or project-level HRA for future wind and solar farm proposals”.

3.3. This paragraph is economical with the truth because as shown below and acknowledged throughout Table 1 (APPENDIX B pp 6-14) there are NK2/Rs actually **inside** PAs.

PA	Where	how changed	rough description	SACs etc. inside or bordering PAs	
1	Whole Anglesey	all coastal removed	Wind and Solar		multiple sites inside SW
2	Lley Peninsula	N and most of S coastal removed	Solar		on N border
3	N Coast Conwy	3 split into two (3 & 15) with gap	Wind and Solar. small part Solar	no NK2R	
15	Mid North Inland		Wind and Solar w. small band Solar		near S border
4	Near Wrexham	reduced ++	Solar	 no	touching border
5	North Montgom.	expanded to NW	Wind and Solar		near SW border
6	Mid Radnor	drawn back from border. Bite out of SW	Wind and Solar		no arrows so is this in PA 6 or PA 8?
7	N of Wye Begwms	N half lost. Touches border	Wind and Solar		inside N.
8	Mynydd Epynt	Bites out of NW & SE “	Wind and Solar		2 sites inside W & mid part of lower blob
9	South of Aberystwyth	N. bit cut out (Aberystwyth)	Wind and Solar		inside midW border
10	S Cardigan Bay	slightly drawn back from Coast	Wind and Solar with Solar prong		inside mid E blob
11	Mid Pembs/Carm	NW removed. SE bite out	Wind and Solar with Solar sliver		touches N border
12	West Pembs.	reduced mainly to S	Solar	no NK2R	
14	Swansea surround	N	Wind and Solar with 2 Solar parts	   	Nr N border inside central S inside and outside central S just outside E border

3.4. Arcadis does not seem to understand the consenting regime or planning hierarchy. While the buffers may inform project-level HRAs, the dNDF clearly states that Local Development Plans and NRW Area Statements are subject to the NDF and so cannot develop spatial plans which deviate in any way from NDF Policies. Moreover, all RE projects over 10MW (virtually all modern wind farms) are determined by the WG.

4. **Priority Areas for refinement, Refined Priority Areas and Buffer Maps 1 – 8 and associated Table 1 (APPENDIX B & Appendices A & B)**

4.1. There are many examples where the text or maps are misleading or simply downright confusing.

4.2. *Misleading examples:*

(PA 1) Table 1 reports “good wind speeds across Anglesey” but referring to Appendix A (of HRA Appendix B), only areas of variable opportunity are left in refined PA 1.

There is no attempt to address the extent of linear SACs, this is a common problem for rivers and the Montgomery Canal and is a serious mistake given the importance of connectivity and increased risk from impacts on upstream tributaries. For example the Table 1 text for PA12 says “Whilst the Cleddau Rivers SAC remains located within the boundaries of this new Priority Area”. But the SAC arrow on the MAP 3 points to **outside** the boundary.

4.3. *Confusing examples:*

It is virtually impossible to follow many of the buffer lines and decide to which designation they belong: for instance the green buffer surrounding NW of PA 6. Many NK2/Rs, for instance appear to have insufficient or no buffers, probably because they are already inside larger buffers of SPAs (20 km or 40km for chough). To give two examples: - Cwm Doethie and Elenydd Maellan are both SAC/SPA and yet it is difficult to find any 20km red buffer: Burry Inlet seems to have a Ramsar Buffer but no SPA buffer.

5. **Arcadis finds the PAs too numerous to look at the impacts on NK@/Rs both inside and outside them**

5.1. (APPENDIX B p4) “The initial assessment in March 2019 (summarised in column 3 in the table below) therefore considered separately the implications for those Natura 2000/ Ramsar sites located ‘Within the Priority Area’ and those ‘Outside the Priority Area’. This distinction is also addressed in the assessment of the subsequent new Priority Areas for Solar and Wind Energy but has not been described separately for each Priority Area given that there are 15 of them”

5.2. These are the refined PAs in the NDF at the highest Welsh planning tier. Policy 10 is unique in being the only fully mapped spatial policy in the NDF and so they must be subject to the strictest possible assessment. The bar for HRA is high and the number of PAs is no excuse for not assessing each one as thoroughly as the unrefined PAs which are not part of the NDF policy.

6. **The HRA implies a lower bar for NK2/Rs inside PAs than those outside PAs**

6.1. The language of the document implies that there is a distinction between “**rigorous HRAs**” outside the PAs and a more lenient kind of HRA with a PA which is anticipating no likely significant effect **in spite of the importance of the buffers clearly set out and explained in the HRA.**

Examples Inside PAs:

(PA 1) “consideration will need to be given to whether or not wetland birds associated with the (Anglesey Fens) Ramsar site could be affected”

(PA 2) “the need to ensure that the proposed location is not a particularly important foraging or roosting area for birds associated with the (North Cardigan Bay) SPA”.

Whereas, Outside PAs:

“Clearly any proposed wind or solar development outside of these new Priority Areas will be **harder to justify**, especially if located closer to the SPAs and other Natura 2000/ Ramsar sites, although that does not mean the such development proposals cannot be consented; rigorous HRA would, however, be required. “ This is repeated for each PA.

6.2. This approach is implying that sites which it has not been possible to exclude from PAs require **less legal HRA protection** than ones that have been excluded. For this to be allowed, there would need to be no alternative site, an imperative over-riding public interest (IROPI) and adequate compensation by the time of the effect (HRA p2. Given the huge area of the PAs and the difficulty of compensating adequately for significant damage to NK2/Rs and associated populations, these tests would be difficult to pass. Pretending that PAs require a lower level of protection for NK2/Rs than elsewhere defeats the whole object of making an HRA of NDF policy 10: creation of priority areas.

7. Distance and risk

7.1. Descriptions of risks within PAs, constantly repeat “**the greater the distance, the lower the risk of impacts**” without drawing attention to the sometimes **very** small distances that make wind farm collision an extremely high risk

Examples:

(PA 1 Wind and Solar area) 1 km from Cemlyn Bay SAC & SPA – 20 km buffer

(PA 2 Solar area) covered by label but <1km from N Cardigan Bay SPA – 20 km buffer

(PA 3 Wind and Solar area) 1 km from the Liverpool Bay SPA – 20 km buffer

(PA 6 Wind and Solar area) touching Elenydd SAC & SPA – 20 km buffer

(PA 9 Wind and Solar area) 3 to 4km from N Cardigan Bay SPA – 20 km buffer and 6km from Elenydd SAC & SPA – 20 km buffer

(PA11 Wind and Solar area) 3 to 4km from Cwm Doethie – Mynnydd Mallaen SAC & SPA – 20 km buffer

(PA 13 Solar area) is only 1km from Burry Inlet SPA – 20 km buffer

(PA 14 (Wind and Solar area) is only 2km from Burry Inlet SPA – 20 km buffer

(PA 15 (mixed Wind and Solar and Solar only areas) Wind section is only 3 to 4km from Migneint-Arenig-Ddualit SAC & SPA – 20 km buffer

Yet, “**given the new Priority Area boundaries (for 3, 4 and 15 – and repeated for all PAs), it is considered highly unlikely that there would be any significant effects on Natura 2000/ Ramsar sites of any wind or solar development**” (Summary implications column)

8. Consent for Wind or Solar sites within PAs which are in or close to NK2/Rs

8.1. The PAs have been set with a presumption of approval. The HRA should be looking at the risks of an NDF Policy which sets priority areas. Is not within the HRA remit to guess about the likelihood of consent, especially when the NDF p36 describes a focus on “minimising”, rather than avoiding, impacts within PAs.

Examples:

(PA 9) Rhos Talglas SAC remains within the new Priority Area, so consideration will need to be given to whether or not this site could be affected (**though it is very unlikely that any wind or solar development would be consented within or close to this SAC**).

(PA 10) does still incorporate Rhos Llawr-cwrt SAC as well as part of the River Teifi SAC, so consideration will need to be given to whether or not these sites could be affected (**though it is very unlikely that any wind or solar development would be consented within or close to these SACs**)

(PA 7) Rhos Goch SAC remains within the new Priority Area, so consideration will need to be given to whether or not this site could be affected (**though it is very unlikely that any wind development would be consented within or close to this SAC,**)

(PA 8) However, Mynydd Epynt SAC remains within the new Priority Area, so consideration will need to be given to whether or not this site could be affected (**though it is very unlikely that any wind development would be consented within or close to this SAC**)

But, then the HRA concludes for each PA: **“given the new Priority Area boundaries, it is considered highly unlikely that there would be any significant effects on Natura 2000/Ramsar sites of any wind or solar development within new Priority Area 1 or 2.”** This is repeated for all other PAs.

9. HRA CONCLUSION

The HRA does not properly address the inclusion of many NK2/Rs inside Priority Areas or the proximity of PAs to other NK2/Rs. Instead it relies both on the “presumption of approval” in Policy 10 not being exercised and on the “extra protection” in Policy 8 - which offers no such protection. No lower-tier planning protection is available for wind farms over 10MW either on land or at sea and so the in-combination impacts of Policy 10 and possibly other spatial land-based policies with the draft WNMP (now adopted) should have been assessed.