

## **Habitat Regulations Assessment / Appropriate Assessment Key points for PI Opening Session**

- This discussion session is entitled 'Need for appropriate assessment' – it should properly be about how the PI will deal with the Habitats Regulation Assessment requirement.
- DECC e-mail setting out how they (the competent authority) propose the HRA issue should be dealt with – NRW support this approach
- The EU Habitats and Wild Birds Directives, transposed in England and Wales by the Habitats Regulations, require the assessment of 'plans or projects' that may have a 'likely significant effect' on a European site. Such plans or projects can only proceed if the competent authority is convinced they will not have an 'adverse effect on the integrity of a European site'.
- The 6 proposals being considered during this PI have the potential to affect three European designated sites, namely:-
  - River Wye SAC (SSA C projects)
  - Pen Llyn a`r Sarnau SAC (SSA B projects)
  - Berwyn SPA (SSA B projects)
- It is therefore a requirement of the competent authority, in this case the Department of Energy & Climate Change (DECC), to undertake a Habitats Regulation Assessment (HRA). DECC has not formally undertaken any part of this assessment for the six schemes.
- The competent authority must decide whether the plan or project will be 'likely to have a significant effect alone or in combination with other plans or projects' (screening), and therefore whether it must be subject to an appropriate assessment. European case law has ruled that the likely significant effects decision must be applied on a precautionary basis, and a plan or project must be assumed to have a likely significant effect unless such effects can be ruled out.
- If the project would have some residual effects on a European site, even with all mitigation measures proposed, the appropriate assessment must undertake an in combination assessment to ensure that, if the project proceeds, the residual effects will not become more significant when combined with effects from other plans or projects. The other plans or projects will be those that similarly have a residual effect after mitigation measures have been implemented, or those that were not subjected to an appropriate assessment because the effects were not considered to be significant, alone or in combination, when checked at the initial stage.
- The information presented by the applicants concludes negligible, not no impact. It is not safe to assume that because a number of individual plans or projects have concluded no likely significant effect, that in combination the effects could not be significant ie many insignificant impacts, can, when combined, become significant.

### **River Wye SAC**

- In the case of the River Wye SAC in-combination assessment, it is Natural Resources Wales' view that, at the current time, the applicants have not provided sufficient information to rule out a likely significant effect in-combination. It is therefore our view, that, on the basis of information currently provided, an appropriate assessment is required in order to establish if there is an adverse impact on integrity.
- For the assessment for this site, where there is a clear pathway and receptor, it is our view that it is unlikely that it will be possible to rule out a significant effect in-combination, and that an appropriate assessment will be required. However, that is not a discussion for today, and may depend on additional information supplied by the applicants.

#### **River Wye Bailey Bridge required for Llandinam AILs transport route**

- The route for Abnormal Indivisible Loads (AILs) that CeltPower (Llandinam Repowering) now intend to follow through Wales from the south, requires the construction of a temporary (16 months) Bailey bridge across the River Wye SAC, somewhere between Built Wells and Aberedw. This proposal has the potential to impact directly (through habitat loss or damage) or indirectly (eg through increased sediment run-off etc) on the River Wye SAC and SSSI.
- The applicants have not provide information on the location of the proposed Bailey bridge, other than it falls within a 7.4 km corridor, or survey information on this corridor, other than a limited phase 1 survey, carried out in February (ie an inappropriate season), which appears to have been largely carried out from the public highway and public rights of way. No desk study appears to have been undertaken. No information has been presented or requested on important fish spawning areas that may be located in this stretch of the river.
- Natural Resources Wales therefore has serious concerns about potential impacts on the SAC through the introduction of these works. To enable the likely impacts of the proposals on the SAC to be assessed, further information is required from the applicant which should include details of the potential impacts on the SAC's designated features, and robust mitigation measures. On receipt of this information, NRW will be able to review its position.
- Based on the information provided so far, we advise that as it cannot be demonstrated that the proposals will not have a significant effect on the European site (either alone or in combination with other plans or projects), and Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) requires DECC to undertake an appropriate assessment of the proposal.

#### **Carnedd Wen**

- In the case of the Carnedd Wen proposals, NRW considers that the project is likely to significantly effect the Berwyn SPA and that an appropriate assessment will need to be undertaken prior to any consent for the scheme being granted. Subject to suitable measures being conditioned, NRW consider that the AA of that scheme should be able to demonstrate that there will be no adverse affect on the integrity of the sites either alone or in-combination.

### **Llanbrynmair**

- With regard to Llanbrynmair, it has been demonstrated that there will be no significant effect alone or cumulatively on European sites subject to the addition of conditions requiring the implementation of measures identified in the ES and SEI. In this instance, an AA will not therefore be required.

### **How dealt with at PI**

- As per the DECC letter, we have offered to produce 3 HRA scoping briefs, and, if the Inspector is agreeable, make them available as core documents on the PI website – these will set out what information we consider is required for an HRA to be carried out for each of the 3 N2K sites.
- We then propose that the HRA/AA issue is dealt with in the 'Matters in common/Cumulative effects session' because:-
  - This is a cumulative issue,
  - This will give the applicants collectively sufficient time to pull together and submit any outstanding information (as opposed to have to provide it by 12<sup>th</sup> June if the River Wye is dealt with in the SSA C session starting in September).