LLANDINAM REPOWERING

APPLICANT'S CLOSING SUBMISSIONS

Introduction

The Applications

1. These Closing Submissions build on – and to an extent deliberately repeat – the Opening Submissions. Unusually there remains no live issue between the relevant local planning authority – Powys County Council ("PCC") – and the Applicant. Nor is there any remaining issue of principle with any other statutory body save for mainly generalised objections from various parish or community councils.

2. The lifting of objections by bodies such as PCC, Natural Resources Wales[1] ("NRW") and the transport arm of the Welsh Government ("WG") reflects the availability to those bodies of relevant and appropriately qualified expert advice; the PCC, NRW and WG experts have been able to satisfy themselves that the Llandinam Re-powering scheme ("LR") can proceed, subject to appropriate conditions. Whilst there are, unsurprisingly, some minor points of difference on matters of detail between those experts and those advising the Applicant, there is a substantial concordance of views. On all matters of principle, and most matters of detail, the opinions expressed by the Applicant's own independent consultants are concurred in and validated by those experts advising the various statutory bodies. In the result, there is no tenable or evidentially robust basis to conclude anything other than a decisively positive overall balance for LR.

3. The Applicant in respect of this re-powering application - ie a scheme to repower the existing Llandinam/P&L wind farm with larger but fewer turbines - is Celtpower Limited ("CP")[2].

[1] NRW Closing Submissions at paragraph 2.2
[2] CP is a joint partnership between Scottish Power Renewable Energy Limited and Eurus Energy Limited

4. There are before these conjoined inquiries, and the Secretary of State ("SofS") two CP applications in respect of LR, namely (1) for consent under section 36 of the Electricity Act 1989[3] ("the 1989 Act") and (2) for a direction under section 90(2) of the Town and Country Planning Act 1990 ("the 1990 Act") that planning permission be deemed granted for the development therein comprised ("the planning direction"). Also before these inquiries is a parallel project – separately promoted – under section 37 of the 1989 Act for a grid connection to serve LR. LR is alone amongst the wind farm projects here in having a specific grid-connection proposal both identified and at application stage. This is significant in several respects:

    a. NPSs EN 1 and 3[4] each stress the importance of the grid connection, the desirability of concurrent applications (for grid connection and generating station) and the risk of advancing one without the other. In the absence of such a grid connection none of the benefits of generation from a given scheme is realisable. Thus LR is significantly more certain than any of the other schemes and at a materially more advanced stage in its evolution; it offers materially earlier delivery of the benefits.

    b. In EIA terms, irrespective of whether or not the grid connection is to be regarded as a part of a given project, sufficient evidence and information must be available to allow the combined environmental impacts properly to be assessed under both European and domestic law. Whilst, in this respect, the Alliance criticises each of the other wind farm schemes before this inquiry no such criticisms has been – or indeed properly could have been – advanced against LR[5].

    c. There is no in-principle objection from PCC to LR's grid connection. Whilst the county council argues for a section of the proposed line to be underground, PCC accepts that both LR and its grid connection should proceed, subject of course to appropriate conditions, including constraints as appropriate to reflect any ultimate decision on the issue of undergrounding. On that latter issue, CP supports the case advanced by SPM against undergrounding, albeit it is for the latter applicant to make that case.

    d. The form of the grid connection is on wooden poles, not latticed steel. It thus respects the criteria considered appropriate in the Welsh context.

[3] CD/COM/023
[4] CD/COM/001 - EN 1 paras 4.9.1-3; CD/COM/002 - EN 3 paras 2.7.8-9
[5] CPL-004 Response to Alliance Doc ALL-002

5. The proposed wind farm would comprise 34 turbines[6], each with an installed capacity of up to 3MW and giving an overall installed capacity of up to 102 MW. The turbines would comprise a tubular steel tower, a nacelle, and a three-blade rotor, having a height to blade tip of up to 121.2m (hub height up to 80m)[7]. The proposed development includes new access tracks and site access[8]. The existing P&L wind farm has been operating on the site since 1992 and comprises 102 turbines with an installed capacity of about 30MW; significantly, it was constructed and operates pursuant to a permanent planning permission, a position which can be contrasted with the present applications which are for temporary consents of twenty-five years. The proposed installed capacity, the reduction in turbine numbers and the change from permanent to temporary consent (with decommissioning requirements) represent a significant, triple benefit over the present position; and they place the LR proposal in an almost unique position, certainly so far as concerns these conjoined inquiries.

6. The LR applications were accompanied by an Environmental Statement ('ES') in accordance with the relevant EIA Regulations; there has been subsequent provision of tranches of further information[9].

Electricity Act 1989

7. The 1989 Act imposes certain duties on any licence holder; CP holds such a licence[10]. Licence holders are required, in formulating any relevant proposals (including the construction of a generating station of more than 10 megawatts)[11], to:

    a. Have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting buildings and other objects of architectural, historic or archaeological interest; and

[6] As against 102 existing turbines. The existing turbines have a hub-height of 31m with a rotor diameter of 28m; this gives height to blade tip of 45 m
[7] Except for T29, 30 and 42 which will be 111.2 m to blade tip – Volume 1 of 2013 SEI at 4.2.4
[8] The ES material has assumed micro-siting of up to 50 m for turbines and up to 100 m for tracks – ES Volume 1 at 4.5.1 paragraph 5
[9] See AD/CPL/002 *et seq*
[10] Thus LR is unaffected by any legal debate about the availability to non-licence holders of the 1989 Act application regime
[11] Schedule 9 para 1(1)

b. Do what they reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

8. The foregoing matters are relevant because, on an application such as this, the SofS is required[12] to have regard to the desirability of the matters in sub-paragraph (a) above (and to the extent to which any licence holder has complied with its duty under sub-paragraph (b) above). It can be seen, for reasons which follow, that the SofS can here be satisfied (1) that appropriate regard has been had to all the relevant matters and (2) that reasonable mitigation is available and can, where necessary, be secured by appropriate condition(s). In respect of (2) it is important to note that the test is "mitigation" – ie not "removal" – of any adverse effects and that the test is further qualified by the word "reasonably"; in other words this is a matter of judgement and balance, having regard to the need to bring forward renewable energy – and the urgency of so doing[13] - to unlock the inherent benefits of renewable energy, particularly for the very environmental interests identified in that Schedule to the 1989 Act. Such benefits are too important and urgent to be lost. Given the material benefits of LR – as against the prevailing baseline of the existing wind farm – it cannot sensibly be argued other than that the cited criteria under the 1989 Act are demonstrably met.

9. There is an allied background point, which resonates under virtually all of the Matters identified by the SofS for these inquiries. The very essence of the proposals here promoted – ie not just LR but all the schemes here being considered - is to respond to the deleterious effects of climate change. Thus, whatever may or may not be the (inevitable) significant effects of any given scheme, renewable energy generation carries with it embedded environmental benefits. For example, when considering any significant landscape and visual impacts it is essential to include not merely adverse effects but also the climate-change benefits – in landscape terms - inherent in renewable energy. **These Closing Submissions seek to avoid repetition and this facet is not separately set out under each and every Matter which follows. Nevertheless, it is of fundamental importance and should be given significant weight throughout.**

Outstanding objections from the public and community/parish councils

10. As is often the way, the scheme has generated a number of representations, including expressions of support. In so far as objections reflect a desire to

[12] Schedule 9 para 1(2)
[13] CD-CPL-LEG-002 The Promotion of the Use of Energy from Renewable Sources Regulations 2011; see also the EU Renewables Directive

protect private interests, the latest, 2014 iteration of *Planning Policy Wales* indicates[14]:

> *The planning system does not exist to protect the **private interests** of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. The Courts have ruled that the individual interest is an aspect of the public interest, and it therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such consideration should be based on general principles, reflecting the wider public interest (for example a standard of 'good neighbourliness'), rather than the concerns of the individual.*
>
> *When determining planning applications local planning authorities must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. Whilst the **substance of local views** must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations. There may be cases where the development proposed may give rise to public concern. The Courts have held that perceived fears are a material planning consideration that should be taken into account in determining whether a proposed development would affect the amenity of an area and could amount to a good reason for refusal of planning permission. It is for the local planning authority to decide whether, upon the facts of the particular case, the perceived fears are of such limited weight that a refusal on those grounds would be unreasonable.* (emphasis as in the original)

As a general proposition, each land owner may develop his land as he sees fit; it is inevitable that any such development may have an impact on neighbouring land – but that, of itself, is not sufficient to refuse consent and the planning system recognizes the need for an element of 'give-and-take'. The prevailing guidance effectively acknowledges the freedom to develop and the stress is on those matters which warrant protection in the public interest as opposed to individual interests *simpliciter*. Additionally, here the development is (1) of a type – renewable energy schemes – which itself falls to be brought forward in the public interest, (2) is wholly reversible in so far as any truly live issue(s) remain(s) before this inquiry and (3) offers significant benefits over the present, baseline situation. In the result, for any planning objection to succeed it must sound materially in the public interest and, additionally, be sufficiently substantial – and the more so since any

[14] At paragraph 3.1.7-8 – Version of February 2014

adverse effect will be temporally limited - wholly to outweigh the other undoubted public benefits of the scheme.

11. There is, perhaps inevitably, a fundamental divide between the Alliance (and other objectors) on the one hand and the various applicants on the other. It is clear that those who have been regular attendees at the inquiry object strongly to the various schemes. And it is equally clear that each of these proposals will carry with it some significant effects – were it otherwise the various ESs would have nothing to say. It is thus important to bear the following in mind.

    a. Whilst it is appropriate to have regard to the concerns of those who oppose LR, any decision here falls to be made on an objective appraisal of the evidence. That called on behalf of LR has been from appropriately qualified experts, contains, in addition to qualitative opinion, quantitative appraisal where appropriate or possible and is expressly related to the detail of the development proposed. The response – and ultimate lack of objection – from public bodies such as NRW and PCC has similarly been based on input from appropriately qualified experts. By contrast, much (though not all) of the evidence for the objectors is non-expert, largely unsupported by any calculation or modelling and highly generalised. A particular contrast can be drawn between NRW, whose objections to the proposal have all been met, and, for example, the Alliance's persistence – and without appropriate expert support – in advancing ecological objections. The independent validation by NRW, WG and PCC of the work of experts instructed for LR is compelling; in the result, little weight can be attached to the objections of the Alliance and other objectors.

    b. LR adopts the cogent formulation advanced by the former Sustainable Development Commission as follows[15]:

> *The impact that electricity generation has on the landscape and environment depends on the type of fuel and technology used to generate it… Fossil fuels such as gas and coal, and the uranium required for nuclear fission, all rely on extractive industries for fuel supply. In the case of coal and gas, this can have a wide and devastating effect on the landscape surrounding the mine site, with associated infrastructure and waste production contributing to a landscape and environmental impact that can last for years. For UK gas (and oil – although this is a minor contributor to electricity*

[15] CPL-PLANNINGBALANCE-POE-APP4- FRAMPTON Wind Power in the UK at section 6.7. **NB LR attaches no weight to the fact that the words were formulated by the former SDC and merely adopts the words used as a convenient and pithy formulation of an important general point**

production), extraction is concentrated offshore and supplies of liquefied natural gas will arrive by sea. However, some onshore infrastructure will still be required to receive, store and distribute the gas and there are a number of environmental issues associated with offshore exploration. And in other countries, gas and oil are obtained from reserves in onshore locations, where landscape effects will be more pronounced. Although many of the landscape and environmental effects of our fuel needs will not be borne in the UK, a sustainable development approach implies all effects should be considered, wherever they occur in the world. It would not be equitable to suggest that landscape destruction in other countries is justified in order that UK landscapes are preserved. (emphasis added)

c. It is also important to bear in mind that the Alliance position is not necessarily representative of all views of the public. The significant expressions of support at the Session 1 evening meeting offer a strongly contrasting note. It is also worthy of note that a considerable proportion of the objection appears directed at the necessary grid infrastructure to unlock the generating sites rather than the wind farms themselves. In the case of LR itself, the proposed grid connection falls within that envisaged by the Welsh Government as not being inappropriate[16].

d. The modern inquiry does not represent a referendum. Thus the objectors' case does not improve the more supporters it calls forward. The test lies in identifying, and weighing, those matters which are material, irrespective of whether a given point is advanced by one or many; and, in so far as technical matters are in issue, the expert is to be preferred to the non-expert and the quantitative to the mere qualitative.

e. Various objectors have advanced blanket criticisms that the wind farm applicants as 'just doing it for the money'; and it is entirely correct that corporate bodies owe a duty to their shareholders. But the criticism is at best naïve. Whilst people may not agree with Government policy, the effect of that policy is to place the burden for bringing forward energy generally, and renewable energy in particular, on the private sector; and the private sector necessarily needs to show a return on investment.

[16] See eg CD/COM/020 the WG letter from Mr Griffiths of July 2011 re transmission network in Mid-Wales

Alternative sites and solutions

12. So far as concerns LR:

    a. The environmental material contains clear evidence of the site selection process, and alternative design and layout; and there is no outstanding Request for Further Information issued by the SofS, whether in this or any other respect.

    b. LR adopts as a correct statement of the law - on the need to consider the availability of alternatives – the text in Volume 2 of the Planning Encyclopedia[17]. In particular, even were the second test in **Edwards v SoSE** met, the third and fourth are not; where need is, as here unconstrained, logically no one site can be an alternative to another - and this is not a case where, as with for example a MSA[18], only one (or a very limited number of) permission(s) is to be granted. The question in the context of on-shore wind farms was expressly considered in **Derbyshire Dales DC v SofS for CLG** ("the Carsington case") and the local authority's argument rejected by Carnwath LJ, as he then was[19].

13. Whilst decided in the English jurisdiction, and under the former PPS 22, the Swinford planning appeal decision continues to reflect a helpful and correct application of the law in this respect, the more so since it was a recovered decision. The Inspector concluded, and the SofS expressly agreed[20]:

> [Having considered PPS 22 (see now *inter* alia Reg 3 – "at least 15%") I *concur with Nuon that the need is unconstrained and RE generation needs to be brought forward wherever it can be, subject to its being acceptable when the overall balance is properly drawn.*
>
> [The Council] *considers that the proposed scale, arrangement and siting of the development have not been demonstrated to be avoidable with reference to alternatives, and submits that smaller or fewer turbines would have less impact on cultural heritage assets. Given the unconstrained nature of the need, Nuon believes that no one RE scheme can be regarded as an alternative to another, and that there is*

[17] At **P70.32-35**, photocopy appended
[18] Motorway service area
[19] [2009] EWHC 1729 (Admin)
[20] At IR para 228-230 and DL para 21 – CD – CPL – INS 002 and 003

no requirement to provide a menu of different layouts, designs, size or number of turbines. Lord Justice Carnwath in the Carsington judgement refers to PPS 22 principle 1(viii), which provides that development proposals should demonstrate any environmental, economic and social benefits as well as how any environmental and social impacts have been minimised through careful consideration of location, scale, design and other measures. He accepted that "careful consideration of location" may be said to imply a need for the developer to demonstrate the particular merits of the selected site, but considered that it was far from requiring the decision-maker in every case to review potential alternatives as a matter of obligation.

This is not a proposal for which only one or at least a limited number of permissions could be granted. If an environmentally preferable alternative site were to be available, it seems to me that an argument might be advanced for the development of both sites, if this was necessary to achieve policy objectives and impacts could be satisfactorily in both cases. I consider that Nuon is correct that even were it the case that smaller or fewer or differently laid-out turbines might have a lesser impact, that is not a reason for refusal. What is relevant is not whether, following the various design iterations, the appeal scheme has adverse effects, but whether any such remaining adverse effects would be outweighed by the benefits. Paragraph 1(viii) of PPS 22 refers to a balance between benefits and impacts, and requires the latter to be minimised. In my view, this means firstly that harm would need to be minimised to the extent that it was outweighed by the benefits; and secondly, that any measures to minimise harm, which could reasonably be achieved without diminishing the benefits of the proposal, should be adopted. The objections to the proposal in this case do not raise any specific issues relevant to the second point. In my view, compliance with PPS 22 is therefore a matter of balance, which I deal with below, but, in the circumstances which apply here, I do not consider that there is any requirement to assess alternative sites or configurations for the proposed wind farm. (emphasis added)

14. So far as concerns the separately promoted grid connection for LR, that is primarily a matter for those promoting that element. For present purposes CP merely notes that the environmental material for that scheme includes consideration of, *inter alia*, alternatives and route selection[21].

15. CP also adopts the submissions of RES on this aspect[22].

[21] Section 37 ES at Section 3 – AD/SPM/019
[22] Llanbrynmair Wind Farm Legal Submissions paras 5-14

Environmental information

16. Regulation 13 of the Electricity Works (Environmental Impact Assessment) Regulations 2000 ("the 2000 Regs") provides that *The Secretary of State, when dealing with a section 36 consent ... in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as may be specified concerning any matter which is required to be, or may be, dealt with in the environmental statement.* Regulation 3(1) precludes grant of consent unless the requirements of Regulation 4[23] have been satisfied. Notwithstanding this, and as already noted, the SofS has not here felt it appropriate to make such a Regulation 13 request in respect of LR; nor, so far as CP understands it, does any person now seriously and tenably assert any material defect or lacuna in LR's environmental material. The combined effect of these circumstances and of a correct construction of Regulations 3 and 4, read with Regulation 13, is to create a legitimate expectation that, even were the SofS now to conclude that the environmental material was not fit for purpose such that further information is required, he would not determine the application(s) unless and until he has so notified CP in writing and allowed it a fair opportunity to provide such information.

Appropriate assessment

17. NRW and CP have agreed that on-site decommissioning, construction and operation of LR are unlikely – whether alone or in combination - to have a significant effect on the River Wye SAC ("the SAC"); there is also agreement that, as far as concerns the proposed Bailey bridge crossing (which in any event is not the subject of the present applications), there is no reason to believe there will be a likely significant effect on, or adverse effect on the integrity of, the SAC. That agreement is obviously predicated on any consents containing the relevant conditions and the appropriate mitigation being brought forward[24]. CP has – moreover and for the avoidance of doubt – carried out what is effectively a 'shadow' appropriate assessment[25]. This confirms that, in any event, LR will not have an adverse impact on the integrity of the European site.

[23] Which sets minimum standards for environmental assessment in relation to a section 36 consent application

[24] SoCG dated 25th February 2014 – CPL-SOCG-HYDRO-CON-003-S4. The HRA is provided without prejudice to CP's primary contention that no requirement for appropriate assessment is here triggered.

[25] SEI 2013 Volume 2 at Appendix 8-6; see also MacArthur Session 4 Proof CPL-ECOLOGY-ADDENDUM-S4 and appendices

In combination/cumulative

18. PCC here apparently argues that, in addition to assessing the incremental effects of each scheme, there should also be consideration of an appropriate cut-off level above which no further schemes should come forward. Two points arise. First, such an approach ignores the fact that the need is unconstrained and each scheme falls simply to be considered in terms of its acceptability, both alone and in combination. There is no justification for imposing some separate cut-off independent from, or additional to, the basic test of each scheme's acceptability. Second, and in any event, LR comes 'at the head of any queue' and the relevant question is limited to which other schemes should also come forward.

Need

19. Dr Constable seeks to argue that the need will be satisfied without need of the schemes before this inquiry. This does not bear examination. It depends upon such need being finite and the targets being capped; yet, as a matter of both law and policy, the need is unconstrained and the targets are minima not ceilings. The point is more generally and fully rebutted in the evidence of Mr Frampton, and others amongst the various applicants' planning witnesses[26]

Carbon balance

20. The Alliance, through Mr Kibble[27], makes a generalised criticism of the various schemes' carbon balances[28]. So far as LR is concerned, Ms Walker has submitted a detailed rebuttal[29]. The Alliance's points are misconceived in this respect; in any event, even were the Alliance correct in all its points, this would still not amount to a reason for refusal. Moreover, Mr Kibble ignores the crucial comparison is between conventional and renewable generation; each will involve CO2 loss during construction but the rationale underlying renewables is carbon saving during operation. The Alliance case on this effectively challenges Government policy.

[26] See Frampton proofs, particularly CPL-PLANNINGBALANCE-REBUTTAL-FRAMPTON
[27] ALL-CLO-POE-02
[28] In the case of LR see Chapter 14 of SEI April 2013, Volume 1
[29] CPL-015

Matters (1)-(3): The extent to which the proposed developments are consistent with:

- The objectives of the Government Policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy and achieving climate change goals.

- The policies relating to generation of renewable energy contained within the relevant National Policy Statements for Energy Infrastructure: Overarching National Policy Statement for Energy (EN-1) of July 2011 and National Policy Statement for Renewable Energy Infrastructure (EN-3) July 2011.

- Welsh Government and local policies: including Planning Policy Wales, Edition 4 (2011)[30]; Technical Advice Note 8, Planning for Renewable Energy (2005); and Energy Wales: A Low Carbon Transition (2012); and Powys Unitary Development Plan (adopted March 2010).

Introductory

21. There is a large measure of agreement on the constituent parts of the policy matrix. The objectors have, however, variously argued that TAN8 is (i) unlawful or (ii) overtaken by events or (iii) needs to be read in a restrictive fashion, notwithstanding the unconstrained nature of the need identified in and required by international and domestic legislation and policy. Given the recent renewed endorsement of TAN8 in the 2014 Revision of Planning Policy Wales it is difficult to see how the objectors can succeed in this respect. But, irrespective of whatever approach is taken to TAN8, LR receives strong policy endorsement at all levels and the resulting planning balance for this scheme is unaltered.

22. So far as concerns the planning evidence of NRW, it should be noted that the statutory body itself felt constrained to distance itself from, and formally to delete, various elements of its own witness's planning-balance proof.

23. In terms of the interpretation of policy, there would appear to be broad and important acceptance by the local planning authority, PCC, of LR's overall accord with development plan and other policy; the point is encapsulated in Mr Carpenter's final proof thus[31]:

[30] PPW Edition 4 was replaced by Edition 5 in November 2012 and by Edition 6 in February 2014. CP's planning evidence for the Opening Sessions and up to February of this year relates to Edition 5; thereafter, primarily for the Planning balance Session, reference was made as appropriate to Edition 6

[31] OBJ-002-PLANNINGBALANCE-POE-CARPENTER at para 4.9 and 7.3

In summary, whilst there would be some significant landscape and visual impacts, there would also be visual enhancements. The proposal does not therefore reach the threshold of unacceptability in landscape and visual terms. In cultural heritage terms, any effects with the revised proposal are less than substantial. There will be some highway disbenefits but these have been so mitigated so as not to be severe and the noise effects are not significant. These harms assessed both individually and in combination do not clearly outweigh the significant benefits of the proposal and I consider that the overall balance in the public interest now justifies grant of an appropriately conditioned consent.

24. Similarly, the Welsh Government ("WG") does not object to LR, recognising its characteristics as a re-powering scheme. See further below.

25. In the circumstances, it would be unhelpful for these closing submissions simply to parrot the planning and policy assessment carried out by CP's planning adviser, Mr Frampton, in his various proofs of evidence[32]. Accordingly these submissions adopt that analysis, which should be read as part of this Closing. The points made below under Matters 1 to 3 seek merely to highlight or comment on various aspects of the relevant issues.

International and UK policy and legal obligations

26. In the case of renewable energy the relevant policies inter-relate with various domestic and international legal obligations and cascade down from the international level through European, national and regional to the local level. There is seemingly substantial agreement on the relevance of various elements at the (inter)national level[33]. Mr Frampton has summarised this higher tier material succinctly in his evidence, as has the Statement of Common Ground produced between the various applicants[34]; that evidence is here adopted, without being repeated, for the purposes of these submissions. It is enough to stress two points: first, the duty on the SofS under Regulation 3 of the Promotion of the Use of Renewable Sources Regulations 2011 ("Reg 3")[35] *to ensure that the renewable share in 2020 is at least 15%*; second, the

[32] CPL-PLA-POE- Peter Frampton proof, CPL-PLANNINGBALANCE-POE-FRAMPTON, CPL-009, CPL_PLANNINGBALANCE-REBUTTAL-FRAMPTON
[33] See finalised version of SoCG-Policy-001-Wales Statement of Common Ground between developers and SoCG-Policy-002 Final Statement of Policy between PCC, NRW and Snowdonia National Park Authority
[34] CPL-PLA-POE Peter Frampton proof Section 2; Developers' SoCG Sections 3 to 5
[35] SI 243/2011 *Renewable share* is defined as *the share of energy from renewable sources in the United Kingdom as calculated in accordance with Article 5 of the Directive* – CD/COM/037

Government's White Paper policy imperative[36] *to produce around 30% of our electricity from renewables by 2020*.

27. In such circumstances the development plan, though still potentially important (subject to its being up-to-date, compliant and comprehensive), takes effect as a product of that overall chain. Even were section 38(6) of the 2004 Act to apply here – and there is agreement it does not - any development plan falls to be considered in the context of the higher legal and policy tiers. At best, the development plan can only hope to be up-to-date and to reflect accurately those higher tiers. In so far as it fails to accord with those higher tiers, the latter are most material considerations indicating otherwise.

28. The fact that the need for renewable energy, as has been recognized by Government, finds expression and is enjoined at the supra-national level is crucial. It means that, in drawing any planning balance, considerable weight is to be attached to bringing forward any relevant renewable energy project. There must be an imperative and overriding reason for refusing such a project. The mere fact there may be impacts – even at the national level and which some argue to be adverse - is not, of itself, sufficient to weigh the balance negatively. That clearly does not mean that no renewable scheme should ever be refused; but refusal can only issue where the adverse impacts are sufficiently great wholly to negate the need for renewable energy and the substantial climate-change and security-of-supply benefits. As accepted by, amongst others, PCC, NRW and the WG, no such adverse impact(s) arise in the case of LR.

29. The content of Government policy is not an appropriate subject for discussion and review at a public inquiry; the inquiries' role is, rather, to apply such policy[37]. Self-evidently, no policy can transmute an immaterial consideration into a material one, or vice versa. The policy-maker is not bound slavishly to follow his/her/its own policy – but any departure from such policy must be justified by clear and cogent reasons[38]. And there must be a consistent approach to the construction of policy; such construction may ultimately be a matter for the courts[39].

30. The prevailing policy matrix fully reflects the general acceptance of the urgency and importance of responding to climate change by, *inter alia*, the bringing forward of renewable energy projects. The question is whether this proposal should come forward to assist in achieving the sort of objectives

[36] The UK Low Carbon Transition Plan (CD/COM/027) – SoCG at paragraph 5.20
[37] **Bushell v SoSE** [1980] 2 All ER 608 HL
[38] **Gransden v SoSE** [1986] JPL 519, at 521; upheld at [1997] JPL 365
[39] **Tesco Stores v Dundee City Council** [2012] SC 13

agreed to be necessary in responding to climate change. The present site and its surroundings are – and will remain - as much subject to the adverse effects of climate change as are other places.

31. The Energy White Paper 2007[40] stated, amongst other things:

> *New renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Individual renewable projects are part of a growing proportion of low-carbon generation that provides benefits shared by all communities both through reduced emissions and more diverse supplies of energy, which helps the reliability of our supplies. This factor is a material consideration to which all participants in the planning system should give significant weight when considering renewable proposals. These wider benefits are not always immediately visible to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions.*

This cited extract referred not only to the climate change benefits of renewable energy but also to the security-of-supply advantages; the strategic importance of this latter element – namely access to energy supplies which avoid the state's and its citizens' being held to ransom – is self-evident but, surprisingly, often ignored. CP's case is that any impacts of LR will not be unacceptable. But, even were CP wrong in that, any adverse impact must still be weighed against the wider national and global imperative. The White Paper also, and unusually, specified the weight to be attached to renewable energy; the fact that this was not simply left to the decision-maker's discretion presumably reflects the overriding importance of bringing forward such projects.

32. Renewable generation needs to be brought forward wherever it can be, subject to its being acceptable when the overall balance is properly drawn. For example, the 2007 White Paper put the question of 'need' beyond doubt when it confirmed that[41]:

> *Recognising the particular difficulties faced by renewables in securing planning consent, the Government is also underlining that applicants will no longer have to demonstrate .. the need for their particular proposal to be sited in a particular location*

[40] May 2007 (FWLC-PLA-002– Box 5.3.3; CPL-PLA- POE Frampton proof paragraphs 2.4 and 2.9
[41] CPL-PLA-POE Frampton proof paragraph 2.9

This also re-confirmed that there is no need to deal with alternative sites. NPS EN 3 reiterates the urgency of the renewables need[42]:

> *Paragraph 3.4.1 above sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable energy electricity generation projects is therefore urgent.*

33. The UK has not performed well in terms of meeting the relevant targets for the provision of energy from renewable sources[43]; Mr Stewart for RES summarised the correct position orally during the planning-balance session. It should also be noted that the Welsh Government does not have devolved powers in respect of energy policy; thus, whilst Welsh policy must be taken into account, the policy context is provided by UK and national energy policy[44].

34. Matter 2 expressly refers to NPS EN 1 and 3. These are dealt with both in the evidence of Mr Frampton and the SoCG. For present purposes it may be sufficient merely to stress one point, namely that:

> *Modern onshore wind turbines that are used in commercial wind farms are large structures and <u>there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site</u>* (emphasis added)

This is but one recognition by the Government that some adverse impacts almost always 'go with the territory'. This further underpins that LR – in delivering landscape and visual benefits over the existing situation - differs fundamentally from the norm; this can only reinforce the acceptability of LR.

[42] COM-001 NPS EN1 para 3.4.5
[43] CPL-PLA-POE Frampton proof, eg paragraph 2.20
[44] TAN 8 paragraph 1.3 – CD/COM/016

Welsh policy and advice

35. Welsh policy and guidance is rehearsed in Mr Frampton's proof[45] and the SoCG[46]. For present purposes it suffices to stress the various points. First:

    a. As the Welsh Government accepts[47], LR - as a repowering scheme - falls into a different category from the other proposals here; *..Llandinam falls just outside SSA C. The Llandinam application is a re-powering of an existing development. The Welsh Government's policy in relation to the re-powering of existing developments which fall outside SSAs is that they should be encouraged* ***provided*** *that the environmental and landscape impacts are acceptable (Section 2.14, Technical Advice Note 8, Welsh Government, 2005).*

    b. Paragraph 2.14 of TAN 8 provides that *There will also be opportunities to re-power and/or extend existing wind farms which may be located outside SSAs and these should be encouraged provided that the environmental and landscape effects are acceptable.*

    c. The Welsh Government assumes, against LR, that the proposal falls outwith the relevant SSA boundary. This is correct in so far as regards the original TAN 8 boundary for SSA C[48]. Here, of course, PCC has carried out a refinement exercise and LR lies wholly within the boundary as so refined. This reinforces the policy support which LR attracts[49].

    d. LR falls to be considered against the baseline not of an undeveloped site but of a site (i) which includes an existing wind farm with a materially greater number of (smaller) turbines (and with materially less installed capacity – 31MW) and (ii) where no condition determines the life of the existing permission or requires decommissioning.

[45] Paragraphs 3.8 to 3.46 and 4.2 to 4.28 CPL-PLA-PF-POE Peter Frampton proof session 1
[46] Sections 6 and 7
[47] Welsh Government letter of 21st January 2013 – CON-001-002
[48] TAN 8 paragraph 2.4 expressly envisages TAN 8 boundaries being open to refinement by local planning authorities
[49] As noted in PCC's Interim Development Control Guidance Onshore Wind Farm Developments ("IDCG") – at paragraph 2.2 – *The second draft of the IDCG was formally authorised by Powys County Council's Board on 22nd April 2008 for use in development control with immediate effect*

e. LR is additionally marked out by the fact of there already being a pending grid-connection application which is proceeding in parallel. That grid connection uses wood-poles and thus is TAN 8 compliant.

36. Second, PPW provides[50]:

> *In the short to medium term, wind energy continues to offer the greatest potential (for activities within the control of the planning system in Wales) for delivering renewable energy. Wales has an abundant wind resource and power generation using this resource remains the most commercially viable form of renewable energy. The Welsh Government accepts that the introduction of new, often very large structures for onshore wind needs careful consideration to avoid and where possible minimise their impact. However, the need for wind energy is a key part of meeting the Welsh Government's vision for future renewable electricity production as set out in the Energy Policy Statement (2010) and should be taken into account by decision makers when determining such applications.*
>
> *The most appropriate scale at which to identify areas for onshore wind energy development is at an all-Wales level. Technical Advice Note 8:* ***Planning for Renewable Energy (2005)*** *identifies areas which, on the basis of substantial empirical research, are considered to be the most appropriate locations for large scale wind farm development; these areas are referred to as Strategic Search Areas (SSAs). The detailed characteristics of SSAs and the methodology used to define them are outlined in TAN8 and its Annexes. Development of a limited number of large-scale (over 25MW) wind energy developments in these areas will be required to contribute significantly to the Welsh Government's onshore wind energy aspiration for 2GW in total capacity by 2015/17…; UK and European renewable energy targets; to mitigate climate change and deliver energy security.*

Notwithstanding the words in parenthesis, the cited extract has resonance for present purposes. Irrespective of the weight – or lack of it, *per* the Alliance – to be attached to TAN 8, the position remains the same. It is noteworthy that the latest iteration of PPW (February 2014) postdates the start of this inquiry and re-asserts the importance of TAN8. There is acceptance of the substantial role for onshore wind energy in Wales; and, whilst Welsh policy is to be taken into account (see above), the context is provided by UK and national policy – this matrix provides the clearest imperative for bringing forward renewable energy, of whatever type, wherever it achieves a positive overall balance.

[50] PPW (Rev 6) paragraph 12.8.12-13; this has been submitted by RWE but, at the time of writing, has yet to be given a reference number

37. Third, so far as regards TAN 8 itself:

a. By letter to all chief planning officers[51] the WG identified changes to the text of TAN8. These included confirmation that paragraph 2.5 (and Table 1 – giving indicative capacity targets for SSAs) of that document had been superseded by "A Low Carbon Revolution: Wales Energy Policy Statement[52].

b. The WG letter of July 2011[53], *inter alia*, indicated the Garrad-Hassan-identified maximum capacities for each SSA were the basis for the estimates of potential in the Low Carbon Revolution document. Whilst the WG expectation may be that *...the Strategic Search Areas have a finite environmental capacity and output should not exceed the maximum levels as assessed in 2005…*, that does not in itself represent policy. In any event, that expectation falls to be construed and applied in the context of the prevailing legal requirement[54] for the UK's achieving *a renewable share in 2020* [of] *at least 15%.*

c. Moreover, even if one ignores the target of 'at least 15%' and additionally treats the 2011 WG letter as policy, such 'policy' does no more than reveal an expectation based upon strategic search. That expectation may form the starting point for considering any individual proposal. But the site-specific assessment of a given proposal may well show that, even if exceeding that capacity upon which the WG's expectation was based, it can still come forward without unacceptable impact. Such a result would not be surprising given two matters: first, strategic assessment must yield to the site-specific; second, changes in turbine technology, with increased generating capacities for individual turbines, necessarily render installed capacity expressed in MW a comparatively clumsy, even out-dated, yard-stick by which to judge environmental capacity and acceptability. Thus, consenting a scheme which would result in expected MW levels being exceeded in a given SSA involves no necessary breach of policy. And, even were a different view taken of Welsh policy, such policy must be read and applied in the overall UK context here.

d. The latest iteration of PPW (Revision 6) was published this February. It expressly endorses the TAN 8 approach. The publication of this Revision, some 30 months after the Minster's letter of 2011, offered the opportunity for the WG expressly to impose a capacity cap as a

[51] CPL-008 WG letter of 28th February 2011 re Publication of Planning Policy Wales Edition 4
[52] CD/COM/009
[53] CD/COM/020
[54] EU Renewables Directive; Promotion of the use of Energy from Renewable Sources Regs 2011

matter of policy; significantly and decisively the Revision does not do that.

e. Finally and in any event, as already noted, LR as a re-powering scheme etc, is not caught by any such policy debate. For example, the WG letter of January 2013[55] makes clear that that re-powering schemes fall to be considered separately from new proposals and are not affected or limited by any capacity constraints. LR can be consented irrespective of the approach taken to this aspect of Welsh policy.

Development plan

38. It is agreed that section 38(6) is not here engaged. But, even were the case otherwise – or the development plan to be regarded as a material consideration of such importance that the approach was the same as would be the case under section 38(6) – the development plan would still here need to be construed and applied in the context of the other policy and legal requirements[56].

39. The concept of accord with the development plan – whether required by statute or merely arising as a material consideration - does not require compliance with each and every policy thereof. The courts have confirmed that, in the context of the old section 54A of the Town and Country Planning Act 1990 (and, by parity of logic, one presumes, section 38(6) of the 2004 Act), it is necessary to read the development plan as a whole. It must also be read in the context of subsequent policy and legislative intervention. On any reasonable analysis, the overall dominant theme or policy matrix is that relating to bringing forward renewable energy to meet targets. LR accords with that theme, and with the policy which enshrines it, namely Policy E3 Wind Power[57]; in any event, the other material considerations militate decisively in favour of consent issuing, even were there some material failure to accord with the development plan.

[55] CON-001-002

[56] Section 38(6) of the 2004 Act provides: *If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

[57] CD/COM/006

Overall

40. LR wholly accords with relevant policy. Even were the SofS to reject that primary submissions – ie to find some material failure to accord with policy – other material considerations militate decisively in favour of consents issuing for LR.

Matter 4 – The individual and combined landscape and visual impact of the proposed development….; and cumulative impact with other wind farms in the Powys area which have been already been granted planning permission or where planning permission has been applied for [Reference to Snowdonia National Park deliberately omitted – only relevant to SSA B]

Landscape and visual - General

41. In circumstances where Messrs Welch and Russell-Vick – for CP and PCC respectively – reach substantially similar conclusions on both the benefits and overall acceptability of LR, it is not necessary to repeat that evidence[58]. These closing submissions merely refer to and adopt that material. For the present it suffices to stress:

    a. PCC has concluded[59] that LR *can now be considered acceptable in landscape and visual terms*. This conclusion by PCC is fleshed out in the L&V SoCGs for Sessions 1 and 4 respectively[60]. In such circumstances, the relevant planning authority raises no objection, cumulatively or alone, to LR, whether in terms of landscape impact, visual effects or residential amenity.

    b. Moreover, PCC's own expert, Mr Russell-Vick, expressly and fairly acknowledged benefits accruing from the substitution of LR for the existing P&L wind farm[61]. He amplified these orally when giving evidence during Session 1; he identified, *inter alia*, what he viewed as the existing wind farm's clutter, stacking and speed of blade rotation as significant existing detractors (acknowledging that the existing wind farm enjoyed a permanent rather than merely temporary permission). He contrasted the present situation with the benefits which would accrue with implementation of LR, the latter being a *more graceful and better fit*. He also identified that, personally, he *would have given it a bigger tick than, perhaps, Mr Welch and the SEI*.

    c. NRW has withdrawn its objection in respect of the Caersws Basin Landscape of Special Historic Importance[62]. It has advanced no specific, evidentially supported L&V objection to LR.

[58] See evidence of Welch and Russell-Vick for Sessions 1 and 4
[59] OBJ-002-OSOC-2 PCC SofC at paragraph 6.3.2
[60] CPL-SOCG-009a, CPL-OBJ-002-SOCG-LAND-S4 and SOCG-LAND-S4
[61] See PRV proofs for Sessions 1 and 4 – OBJ002-PCC-LAND-POE-RUSSELL-SSA-C, especially at section 5 and OBJ-002-LAND-POE-RUSSELL-S4
[62] NRW letter dated 24th May 2013; CON-003-003

d. The Session 1 evidence adduced for the Alliance by Mr Watkins was limited to landscape impacts and was expressly cross-referenced to the PCC evidence; it is assumed that this reflects acceptance by Mr Watkins of at least those of Mr Russell-Vick's points which relate to visual impacts and residential amenity. Despite this, Mr Watkins still sought to argue that LR was unacceptable in landscape terms; this assertion is difficult to reconcile with Mr Russell-Vick's more nuanced, subtle and detailed approach. It is also noteworthy that Mr Russell-Vick takes the correct baseline for his assessment, namely the existing, permanent P&L wind farm; it is far from clear that Mr Watkins has adopted this approach and, to the extent that he has not, his downstream assessment is yet more and irredeemably flawed. Even were one wholly to reject the views of Messrs Russell-Vick and Welch to the extent they differ from that of Mr Watkins, the latter's generalised and limited assertions cannot begin to provide a legitimate, reasoned basis for refusal. Mr Watkins's Session 4 evidence was yet more generalised and failed to grapple with the essential acceptability of replacing the existing P&L wind farm with LR.

42. The above evidence also, and in any event, needs to be considered in the wider landscape and visual context. The various landscape witnesses have considered the various impacts, both in so far as adverse and where, as in the view of Messrs Russell-Vick and Welch, beneficial. In so far as there are adverse effects – and ignoring for a moment the benefits – these need to be weighed in a wider landscape balance; this is because (part of) the very essence of bringing forward renewable energy schemes is to arrest and redress the deleterious effects of climate change on receptors such as landscape and views, both generally and with particular regard to the receptor landscape and views in this part of Mid-Wales. It is thus necessary, and wholly independent of any drawing of the final planning balance, to ensure that these wider though necessarily less tangible landscape and visual benefits are given proper consideration in reaching a conclusion on the L&V issue. In other words there is an additional netting-off exercise which needs to be carried out. This can only have the effect of making LR yet more acceptable.

43. PCC acknowledge a need to consider an incremental approach to in-combination/cumulative assessment; but it also seemingly asserts a requirement to identify an appropriate cut-off above which additional wind farms should be refused, even if any incremental effect is not unacceptable. The evidence of Mr Russell-Vick is only of limited help in this latter respect. But, and in any event, LR – by virtue of its very special (and arguably uniquely acceptable) circumstances - falls to be taken as the first scheme in any building-block approach. Even were one to adopt PCC's approach, the question is thus not whether LR should come forward at some stage but simply which schemes should come forward after LR has been consented. In

everyday language, LR falls to be consented even were all other schemes before these conjoined inquiries to be refused; PCC effectively adopts this approach and, in so far as concerns SSA C for example, asserts that the only additional scheme after LR should be the northern portion of Llaithddu. For its part, CP does not argue that the other schemes should not be consented but merely stresses its own primacy in terms of acceptability.

44. NPS EN3 indicates[63]:

> *Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres.*

and;

> *The time-limited nature of wind farms, where a time limit is sought as a condition of consent, is likely to be an important consideration for the* [decision-maker] *when assessing the impacts such as landscape and visual effects and potential effects on the setting of heritage assets. Such judgements should include consideration of the period of time sought by the applicants for the generating station to operate and the extent to which the site will be returned to its original state may also be a relevant consideration.*

These two citations are of central importance. First, one might legitimately question the extent to which the first quotation properly encapsulates a situation where many of the significant impacts are positive and not negative; thus, on this score alone, LR performs materially better than almost any other wind farm. Second the temporal nature of LR is of paramount importance. Whereas the existing P&L wind farm - with its permanent permission and absence of decommissioning and restoration requirements - carries with it no enforceable mechanism for return to the *status quo ante*, implementation of LR will be subject to a fixed duration for the development and an enforceable return to a pre-wind farm landscape at the end of that period. These two factors reinforce LR's almost unique position in policy terms and militate decisively in favour of its being consented.

45. As the former SDC indicated[64]:

[63] CD-COM-002 NPS EN3 paras 2.7.48 and 2.7.17

Recent changes to planning guidance across the UK require local decision-makers to consider national energy priorities when deciding on local renewable energy projects, and in many cases it is now unlikely to be enough to reject an application on landscape grounds alone. Considering the high level of national and often local support for wind power this seems a reasonable approach in cases where there is no special landscape designation.

There is a strong case for viewing wind developments as temporary structures, pending longer-term approval on landscape grounds. As a full decommissioning is usually possible, lasting objections could potentially be remedied by on a case-by-case basis by the eventual removal of the turbines at the end of their working lives. The energy options will have changed by then, and other technologies may be available. However, it should also be recognised that landscape change has a long history and that what may seem alien now may become accepted over time. Evidence suggests that hostile opinion towards wind farms tend to soften after they are commissioned, and there is no reason to believe this trend will not be replicated at future developments.

Any concern that UK landscapes will be ruined wind farm developments needs to be balanced against the widespread harm that climate change itself could cause. Previous chapters have shown that wind power is a practical and viable solution to climate change as part of the much wider societal and economic change that is necessary. The development of onshore wind power will make a major contribution to meeting renewable energy targets, and it is not practical to expect offshore wind, which is significantly more expensive, to do this alone.

Overall

46. In the result, there can be no L&V reason for refusal. Moreover, it is important to carry forward into the overall balance the clear L&V benefit delivered by LR as against the existing baseline.

[64] CPL-PLANNING-BALANCE-POE-APP4—FRAMPTON: SDC *Wind Power in the UK* at 6.9. Again, LR notes that the SDC has ceased to exist and relies on the quotation simply as a helpful encapsulation of a number of points. NB the Guide remains available on the internet.

Matter 5 – The individual and cumulative impact of construction traffic on the surrounding locality, including transportation access routes and traffic management, taking into account the cumulative impact with other wind farms in the Powys area which have been granted planning permission or where planning permission has been applied for.

General

47. These Closing Submissions adopt, without repeating, the proofs and other material submitted to the inquiry by Mr Tucker on behalf of CP.

Local access to the site

48. The Welsh Government ("WG") raised matters going only to the trunk road network. As Mr Tucker explained orally[65], the WG is content with access to the site from the trunk road. PCC indicated[66] that it had *...no objection to the local access arrangements subject to imposition of conditions and satisfactorily resolving the issue regarding the stand of mature trees adjacent to the U2835*. CP has secured land such that a diversion around the relevant stand of trees can be achieved. Thus no local objection remains in respect of local access from any relevant highway authority.

49. NRW originally raised a concern re an asserted lack of a co-ordinated approach between CP and those promoting Llaithddu as regards proposed modifications to the minor road running from the junction of the A483 to the site entrances to the two sites. Following discussions with PCC, NRW has confirmed[67] it is happy to leave such matters to PCC – who do not have any such objection; thus NRW has no remaining issues of significance to raise under Matter 5.

Non-local and strategic access and AILs

50. So far as concerns non-AIL traffic generally, Mr Axon has advised PCC that such movements will be reasonable and not of sufficient scale to maintain an

[65] Session 1 Day 1
[66] OBJ-002-(PCC)- TRANSPORT-POE-WILLIAMS-SSA-C Williams proof paragraph 45; see also CPL-SOCG-006
[67] CON-003-011

objection[68]; PCC has accepted that advice. Nor does WGT raise any such objection.

51. As regards AILs, Mr Axon has concluded[69] that *...Llandinam AILs are capable of being appropriately accommodated by the* [southern] *route* and has no *...preference in principle between the use of Ellesmere Port and Newport for the transport of Wind Farm components from ship to shore. I understand that PCC also supports the use in principle of either route.*

52. By letter dated 25th February 2014[70], the WGT confirmed it had revised its position, no longer objecting to LR, and identified the conditions it wishes imposed. It had already confirmed, in its letter of 21st January 2014[71] that it had no objection in principle to the southern route. The WGT has re-confirmed its position[72] by letter dated 28th March 2014 and has no objection in principle. It is confident that an engineering solution to the Crossgates Bridge can be found; it further confirms that, so far as concerns the Bailey bridge crossing, WG's only remit is the tie-in points for the private haul road with the trunk road – and it is satisfied these can be dealt with as matters of detailed design at that later stage. PCC sees no reason in principle why planning permission should not be granted for the Bailey bridge[73].

53. Llaithddu and LR have agreed a joint statement[74] relating to the strategic transport routes proposed for delivery of turbine parts and other AILs on the trunk road network. This deals *inter alia* with the question of such deliveries to both schemes concurrently. As there identified, there are two significant reasons why this could not occur: First, the two grid connection dates are materially separated, with LR's being 2017 against Llaithddu's 2019; second, the Police have advised that they will not allow two convoys on the same part of the network at the same time. There is no basis for concluding other than that concurrent use cannot and will not occur.

54. There is clearly a significant planning advantage in the proposed use of the southern route for AILs; it is deliverable, including obtaining the necessary consents, without any appreciable delay to LR. It will thus facilitate prompt delivery of the enhanced renewable generation which LR will unlock. Nor can the uncertainties in respect of the sTMP route – including timescales and mechanisms for delivery of shared works by the relevant applicants – sensibly

[68] OBJ-002-TRANS-POE-AXON-S4 Axon Proof Session 4 at para 2.29
[69] ibid Axon Session 4 Proof at 2.25 and 26
[70] CON-001-POE-S4-CPL, WGT indicated it accepted
[71] CON-001-SOC-S4-CPL
[72] CON-001-008-Response to Inspector's questions
[73] PCC Submissions at para 985
[74] FWL-CPL-SOCG-TRANS-S4

be ignored[75]. Mr Tucker also identifies the northern route's reliance on major improvements to the A483 through Dolfor and the associated link to the Mochdre Estate. In all the circumstances, the southern route allows LR to come forward without the significant delay which would accrue were LR to be required to use the sTMP route. In saying that, CP does not seek to criticise the northern - ie sTMP – route; it merely notes the elements of that route which have yet to be fully resolved and finalised. The point CP makes is thus that the southern route, even put at its lowest, involves no greater uncertainties than the northern; and, in the case of LR, the southern route allows the scheme to proceed without delay.

55. Of additional note are the material advantages offered by the southern route in allowing AIL deliveries between Newport Docks and the LR site in a single day; without need of overnight layover. Such layover is unavoidable with the northern route.

Overall

56. There is thus no objection from either relevant highway authority and no basis, whether alone or in combination, for refusing LR on transport grounds.

57. The evidence of Mr Durgan is noted but it cannot sensibly stand against the robust evidence from, and detailed aspects of agreement between, Mr Tucker for CP and those experts who advise WGT and PCC. Mr Tucker has commented, orally in Session 1 and in writing and orally in Session 4[76], on these and other points made by objectors; it is unnecessary to reiterate those responses.

[75] CPL-TRANS-POE-TUCKER-S4 Tucker Session 4 Proof paras 7.1-2
[76] CPL-TRANS-STATEMENT-TUCKER-S4 responding to Durgan proof

Matter 6 – The individual and combined impact of the noise generated during the construction and from the operation of the proposed development taking into account the cumulative impacts with other wind farms in the Powys area which have already been granted planning permission or where planning permission has been granted

General

58. The starting point is PCC's acceptance that the appropriate noise levels can be met for LR, both alone and in combination/cumulatively[77]. That agreement extends to include ETSU-R-97 limits, tonal noise, low frequency noise, infrasound, ground-borne vibration and amplitude modulation ("AM" – further submissions re AM are made below). This agreement is important given that it represents 'sign-off' by the local environmental health authority on the basis of clear professional advice from that authority's appropriately qualified expert.

59. The agreement with PCC also includes construction noise; the relevant controls include the specific powers to control construction noise under sections 60 and 61 of the Control of Pollution Act 1974 and the use of condition(s) to control working hours.

60. The Alliance has had the opportunity to provide expert evidence in so far as it disagrees with the joint opinion of PCC and CP – ie qualitative evidence - and to produce its own calculations/measurements in so far it disagrees with the quantitative material provided by CP. I deal with AM below; in all other respects, the objectors have substantially failed to call evidence - as opposed to assertion - and thus advance no technically competent objection of substance. To the extent that objectors have called subjective evidence of residents' experiences at other wind farm(s), this has again fallen short of quantitative evidence to substantiate any precisely measured or calculated impact at such other wind farm(s). In any event, there is no evidence to support any tenable conclusion that such effects will occur at LR.

[77] CPL-SOCG-004a-NOISE

Amplitude modulation - AM

61. As identified by Mr Hayes in his Session 1 evidence[78], ETSU-R-97 already takes account of AM. The question thus concerns enhanced or excessive AM, if and where it were to occur. In that document Mr Hayes' evidence then goes on to deal with and respond to the various points raised by Mr Weller in his Session 1 proof on behalf of the Alliance.

62. A Joint Statement on AM, produced by the experts for the various applicants, is at Appendix A of Dr Bullmore's Session 4 proof[79]. Enhanced AM is not an inherent feature of wind turbines and does not occur at all sites. It should also be borne in mind that there exists the statutory nuisance regime which, the SofS may conclude, offers a more flexible and precise tool to deal with any risk of enhanced AM than an AM condition[80]. RWE has produced a helpful Note summarising the difficulties with an AM condition[81].

63. In the premises, the SofS may well feel entitled to conclude that an AM condition is neither necessary nor appropriate here. CP notes the various, very recent decisions, referred to and submitted by RWE, where the SofS has chosen not to impose an AM condition[82]. One notes that Mr Bufton, a senior environmental health officer and the acoustic expert on behalf of PCC, expressly declines to argue that an AM condition is required[83]. If, however, the Secretary of State decides to impose a condition, it should be in the form suggested by Dr Cand[84].

Health/noise interface

64. Dr Myhill's proof[85] asserts health impacts in so far as concerns noise from turbines ie operational noise. The proof appears for the most part to contain the results of an internet trawl. No site-specific calculations or survey material are provided in so far as concerns the applications before these inquiries. The material relied upon is used merely to make general and somewhat vague assertions re wind farms generally; it seemingly makes no specific reference to

[78] FWLC-008-Amplitude-Modulation-Malcolm-Hayes
[79] APPLICANTS-NOISE-POE3-BULLMORE-SESSION4
[80] PCC seemingly asserts that the statutory nuisance regime prevents nuisance rather than protecting amenity (PCC closing submissions, footnote 1134 to paragraph 918) . Even assuming that is more than a distinction without a difference, it fails to explain or justify why the statutory nuisance regime is other than wholly appropriate for present purposes.
[81] Carnedd Wen note for the Conditions Session re Condition Relating to Amplitude Modulation
[82] Submitted by e-mail dated 26.v.14, by RWE; at the time of writing no reference number yet allotted
[83] OBJ-002-NOISE-BUFTON-S4 at para 6
[84] CPL-014-Dr Cand Note on Noise
[85] ALL-S4-POE-07

the wind farms here being considered. Dr Cand has provided a detailed rebuttal of Dr Myhill's assertions and concludes[86]:

> *In conclusion, there currently exists no evidence that noise and vibration generated by wind turbines causes any specific health effects. Whilst a proportion or people living near wind farms may experience annoyance and or stress caused by audible noise that may lead to impacts on health, this is no different from any other development that generates noise. Consequently, there is no reason to treat the impact of noise from wind farm development any differently to noise from other form of development.*
>
> *Compliance with ETSU-R-97 means that, although noise may be audible in some conditions, noise levels would be considered to have an acceptable impact on existing communities and will therefore accord with the requirements of national and local planning policy.*

Dr Cand also provides a detailed and cogent critique of Dr Myhill's approach to AM and her suggested condition[87].

Overall

65. No noise or noise-related health matter can here amount to a reason for refusing LR. The SofS is further entitled to conclude that no AM condition is required or appropriate; even were he to take the view that such a condition were necessary, it should be on the lines advanced by Dr Cand.

[86] CPL-NOISE-REBUTTAL-S4-Rebuttal of Dr Myhill at 1.15-6
[87] ibid paras 1.17-21

Matter 7 – The individual and cumulative impact of the proposed development of the proposed development on biodiversity, including the ecological functioning of … the River Wye SAC; impacts on European Protected Species under Conservation of Habitats And Species Regulations 2010 (as amended) ("the Habitats Regulations"); and the likely effectiveness of proposed mitigation measures

Preliminary

66. The submissions under this Matter deal only with such issues as were raised by the relevant statutory bodies - though all such issues have since been settled with the body raising them. So far as concerns the various, generalised concerns raised by others – and unsupported by quantitative analysis – CP refers to its environmental material and the proofs of its relevant experts; there is no substance in such concerns and it is unnecessary to deal with them here. As regards peat, CP recognizes this can be seen to have a biodiversity element but this aspect is more appropriately dealt with under Matter 13 below.

River Wye SAC (and mitigation)

67. As detailed above in the Introduction, NRW has now accepted that the SAC aspect can be appropriately dealt with and does not represent a reason for refusal of the two LR applications before this inquiry; see SoCG[88]. That SoCG also deals with the Bailey bridge crossing, though this is not the subject of the present applications; in that respect CP and NRW agree that (i) there is no reason to believe there will be a likely significant effect on the SAC as a result of the construction and use of the Bailey bridge, whether alone or in combination and (ii) it should be possible through appropriate mitigation - secured by conditions attached to any Bailey bridge planning permission – to conclude it will not adversely affect the integrity of the SAC.

68. There is no other appropriately qualified expert evidence of any substance to contradict the agreement between NRW and CP. In the result, no issue remains.

[88] CPL-SOCG-HYDRO-CON-003-S4

Protected species (and mitigation)

a. Bats

69. NRW has concluded that there would be no likely significant effect upon bats nor any likely detriment to the favourable conservation status of bat species. It has therefore withdrawn its objection to LR[89].

70. There is no other appropriately qualified expert evidence of any substance to contradict NRW's view. No reason for refusal in this respect arises.

b. Curlew

71. There is agreement of common ground between CP and NRW; the latter has withdrawn its LR objection, subject to the imposition of agreed conditions[90].

72. There is no other appropriately qualified expert evidence of substance to contradict NRW's view. No reason for refusal in this respect arises.

c. Other protected species

73. No other outstanding issues arise so far as concerns NRW. Nor is there any appropriately qualified expert evidence of substance capable of raising any other issues. CP refers generally to the extensive written evidence and other material provided by its various experts, in both Sessions 1 and 4, which deal with all ecological matters (including curlew, bats and the SAC); that evidence is comprised in the various proofs and other material provided by Ms Walker, Dr Holloway, Dr Whitfield, Mr MacArthur and Mr Parker. Reference is also made to the original ES and subsequent SEI material. The various mitigation measures are dealt with in those proofs, and in the LR environmental material, in so far as appropriate.

74. No reason for refusal arises.

[89] CPL-SOCG-001A-BATS
[90] CPL-SOCG-002B-ORNITHOLOGY

Alliance/objector points

75. Mrs Davies provided a proof of evidence for Session 4 dealing with Wildlife and Ecology[91]. The proof is generic rather than specific. A Rebuttal Proof is provided by Mr MacArthur[92]. Mrs Davies's points do not alter the submissions already made above.

Overall

76. Overall, whether viewed alone or in combination, no issue remains under Matter 7 to preclude consents issuing for LR.

[91] ALL-S4-POE-06
[92] CPL-ECOLOGY-REBUTTAL-MACARTHUR-S4

Matter 8 – The individual and combined social and economic impact of the proposed development, including on tourism

77. A convenient starting point is PCC's confirmation that it raises no objection in respect of the matters covered by Matter 8[93]. That is the more significant since PCC originally had reserved its position in this respect and only confirmed its absence of objection after it had carried out specific investigations. PCC stated[94]:

> "*The Council have now concluded their investigations and has concluded that, given the siting of the proposals within SSA's and given that the proposals are for nationally important infrastructure projects, there is insufficient evidence to support an impact on socio-economic interests of sufficient magnitude to give rise to a refusal of some or all of the projects on this ground. In the circumstances the Council do not intend to call evidence on the socio-economic impacts of these developments and do not intend to pursue an argument that they should be refused on that basis".*

78. Further assistance in approaching this Matter is found in EN 1 which indicates[95]:

> *The* [decision-maker] *should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the* [decision-maker] *considers both relevant and important to its decision.*
> *The* [decision-maker] *may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).*

79. Further important considerations are as follows:

    a. The underlying cause of concern of the Alliance and other objectors is the asserted effects on the environment, especially but not exclusively in landscape and visual terms; these allegedly translate into adverse

[93] PCC Updated Outline Statement of Case Addendum 1 OBJ-002-OSCO-2-ADD Addendum to revised statement of case
[94] OBJ-002-OSCO-2-ADD Addendum to revised statement of case, paragraph 2.4
[95] CD-COM-001 paras 5.12.6-7

socio-economic effects, including on tourism. The Alliance identifies the receiving environment of concern under this Matter[96] thus:

> *The overriding characteristic is the unspoilt, tranquil landscape and outstanding, panoramic views. It is a rural, mainly upland hill farming, area with fertile green valleys providing good grazing land; market towns and business parks.*

It is the asserted adverse impacts on this receiving environment which broadly underpin the objectors' socio-economic objection.

b. The Alliance and other objectors fail in this context to acknowledge the reasons underlying the strong national and international support for renewable energy, namely to stem or reverse the deleterious environmental effects of climate change on just such receiving environments and to provide energy security. The landscape (and ecology) in Mid-Wales, so lyrically described by the Alliance, is no more immune to the deleterious effects of climate change than landscape anywhere else. And neither business not tourism interests are likely to welcome or benefit from any shortfall in energy security.

c. To the extent that the wind farms respond to deleterious climate-change effects (and improve energy security) – and even assuming, which is not accepted, the objectors were correct in every other aspect of their socio-economic objection – it would be unfair and wrong to ignore the very real and relevant benefits of renewable energy.

d. In any event and unusually, LR carries with it material, scheme-specific benefits, including in terms of L&V and cultural heritage, as spoken to by CP's witnesses and expressly accepted by PCC's experts and others. Thus, even putting the objectors' case at its highest, LR's visual benefits would do their bit in making the area more attractive to tourists and businesses generally.

e. Nor will traffic delays have any materially adverse effect on tourism. Mr Tucker's evidence[97] demonstrates that the impact on existing traffic will be minimal. This has not been challenged by either PCC or WG. And the Alliance has produced no quantitative evidence to challenge Mr Tucker's work.

[96] ALL-S4-POE-04 at para 1.1
[97] CPL-TRANS-POE-TUCKER-S4, especially paras 5.3-5 and 8.5

80. Mr Frampton identifies[98] that, so far as he is aware, *..there is no evidence from other parts of the UK that the presence of wind turbines in the open countryside has resulted in measurable harm to a local tourist industry*. In this statement he is supported by the views of others, including Mr Cradick[99] and Mr Stewart[100]. His view also echoes the conclusion reached by PCC after its independent research of the matter. These closing submissions rely also and generally on Mr Frampton's other treatment of the tourism issue[101].

81. So far as concerns the wider socio-economic benefits:

    a. Mr Frampton[102], amongst other things, (i) concludes that, if the WG ambitions for onshore wind are met, significant economic opportunities exist for the Welsh economy and (ii) cites and produces an onshore-wind-development report by Regeneris and the Welsh Economic Research Unit at Cardiff Business School indicating that £2.3 billion GVA could be added to the Welsh economy between 2012 and 2015 with over 2000 jobs on average per annum.

    b. The influential Stern Review[103] expressly concludes that the (economic) benefits of strong early action on climate change outweigh the costs. Were a simple 'Business as usual approach' (BAU) to be continued, i.e. simply to go on as we are:

> *In summary, analyses that take into account the full ranges of both impacts and possible outcomes – that is, that employ the basic economics of risk – suggest that BAU climate change will reduce welfare by an amount equivalent to a reduction in consumption per head of between 5 and 20%. Taking account of the increasing scientific evidence of greater risks, of aversion to possibilities of catastrophe, and of a broader approach to the consequences than implied by narrow output measures, the appropriate estimate is likely to be in the upper part of this range.*

[98] CPL-PLANNINGBALANCE-POE-FRAMPTON at para 5.10
[99] RWE-SOCIOECO-POE-CRADICK-S4
[100] RES-TOURISM-POE-STEWART-S4 and RES-SOCIOECO-REBUTTAL-STEWART-S4
[101] See CPL-PLA-PF-POE Peter Frampton proof at paras 4.61-65, CPL-009 Peter Frampton statement at section 2 and CPL-PLANNINGBALANCE-POE-FRAMPTON at Section 5
[102] CPL-PLA-PF-POE Peter Frampton proof at paras 4.66-68
[103] CD-CPL-MIS-001 The Stern review: The Economics of Climate Change – Final report October 2006 – Executive Summary

82. By way of aside, rights of way (so far as they affect tourism), are dealt with under Matter 15 below.

83. Overall it can be concluded that: first, there is no sustainable and evidentially justified objection to any of the projects before these inquiries; second, and in any event, no such objection can represent a reason for refusing LR (or its associated grid connection) given the material benefits which LR delivers over the existing situation with the P&L wind farm.

Matter 9 – The potential impact of the proposed development on human health

84. In so far as necessary and save for one point, this aspect has been covered above under Matter 6 – Noise. This is because that is the context in which such points have been taken by objectors.

85. So far as concerns shadow flicker, there is no objection from PCC. A detailed assessment is contained in the LR environmental material and there is no basis for withholding consent on this ground. Even were there potential for effects here, the turbines would incorporate the appropriate control mechanism and EN 3 helpfully confirms[104]:

> *Modern wind turbines can be controlled such that the operation of individual wind turbines at periods when shadow flicker has the potential to occur at a specific property or group of properties can be inhibited on sunny days, for those properties, for specific times of the day, and on specific days of the year.*
> *In circumstances where a wind turbine has the potential to affect a property, but is fitted with a mechanism to inhibit shadow flicker, the* [decision-maker] *should be able to judge the shadow flicker effects on that property to be of negligible significance.*

86. There are no health grounds for refusing the LR consents sought.

[104] NPS EN3 paragraphs 2.7.68-69

Matter 10 – The impact of the proposed development on cultural heritage

Extent of objection (in so far as comprises the views of relevant experts)

87. NRW, CPAT, PCC and CADW have no cultural heritage objection to LR in its now proposed form; see in particular the statement of Common Ground between PCC and the evidence of Dr Edis[105]. That lack of objection, from bodies with access to appropriately qualified, expert advice, is significant. Similarly, whilst the Alliance and other objectors raise various criticisms on LR in this respect, none is supported by any expert evidence and they must yield to the evidence of Dr Edis[106]; see also the evidence of Mr Croft, encapsulating his advice to PCC. In particular, the evidence of Mr Kibble falls materially short of anything which could contradict the broad level of agreement between the relevant expert bodies[107]; in giving evidence at Session 1, Mr Kibble very frankly accepted he had no relevant expertise or qualification in cultural heritage matters.

General

88. It must be recognised that, as with L&V, the reduction in LR turbine numbers and the resulting benefits acknowledged by Mr Russell-Vick apply equally when looking at cultural heritage issues. Here again, LR finds itself in an almost uniquely favourable position.

89. Similarly, the importance of the development's being temporary and reversible is material, as is the correct base-line for assessment – ie the existing P&L wind farm, with its permanent permission and absence of decommissioning requirement. EN 3 enjoins[108]:

> *As explained in paragraphs 2.7.13 to 2.7.17 above, onshore wind turbines are generally consented on the basis that they will be time-limited in operation. The* [decision-maker] *should therefore take into account the length of time for which consent is sought when considering any indirect effect on the historic environment, such as effects on the setting of designated heritage assets.*

[105] CPL-SOCG-008-Cultural heritage
[106] CPL-HERITAGE-POE-EDIS-SSA-C, CPL-HERITAGE-REBUTTAL-SSA-C, CPL-012-Comments on Proofs of Andrew Croft and Martin Carpenter and CPL-CULTHER-POE-EDIS-S4;
[107] See also CPL-HERITAGE-REBUTTAL-SSA-C
[108] NPS EN3 at para 2.7.43

The change from the P&L wind farm to LR would thus represent a material advantage by establishing a finite life for the repowered wind farm, with clear decommissioning requirements.

90. CP recognizes and stresses the various statutory duties on decision-makers, including those under sections 66 and 72 of the Planning (Listed Buildings etc) Act 1990[109]. Whether or not such statutory provisions duties are strictly engaged here, the duties they enshrine apply equally as material considerations; and the result is little different. A careful analysis of relevant heritage assets is to be found in the LR environmental material and, in so far as appropriate, in the evidence of Dr Edis. It is unnecessary to rehearse those matters further here.

91. In Session 1, Mr Croft accepted the approach to substantial harm adumbrated in the Airfield farm decision[110] ie that such harm must be regarded as something approaching demolition or destruction. The case of **Bedford BC v SofS**[111] - where that Airfield Farm appeal decision was unsuccessfully challenged - was not overruled by the Court of Appeal in the **Barnwell Manor** case[112] but, as noted by PCC[113], needs to be read in the light of that later Court of Appeal judgment.

92. It is unnecessary to take these submissions further in this respect. PCC accepts that Matter 10 does not raise any issue justifying refusal of the LR consents. Mr Andrew Croft's report on behalf of PCC identifies that LR can come forward not only in isolation but also with, *inter alia*, the northern portion of Llaithddu and Hirddywel; these PCC considers[114] to be *acceptable in the context of relevant national policy*. In any event, and on a proper and fair analysis of the evidence, LR affords material benefits in cultural heritage terms over the existing situation. No cultural heritage reason for refusal arises.

[109] As to section 66, see PCC Legal Submissions at paragraph 15. As to section 72, and as expressly noted by CP during Session 1, that duty would not seem to be engaged here, given that the decision-maker is not here exercising any functions under any relevant Acts … *with respect to any buildings or other land in a conservation area* – none of the LR development lies within a conservation area. But CP accepts that, even if section 66 and/or 72 are not engaged, the same duties devolve upon the decision maker as most material considerations; see also schedule 9 of the 1989 Act.
[110] Accepted by Croft xx by Robinson Day 3 of Session 1: see Airfield Farm decision letter VATT-INS-11 – also High Court challenge CPL-12a-Appendix – 1- Judgement- Poddington.
[111] [2013] EWHC 2847
[112] [2014] EWCA Civ 137
[113] PCC legal submissions at para 12
[114] OBJ-002-CULTHER-POE—CROFT-S4

Matter 11 – the individual and cumulative impact of the development on aviation

93. No relevant aviation body objects under this head. In particular, there is no objection from the MoD, either in respect of radar or of low flying. This last contrasts starkly with the submission of Mr Brebner which purports effectively both to raise, on behalf of the MoD, a low flying objection and, seemingly at the same time, to criticise the MoD generally. Mr Brebner neither asserts nor demonstrates any relevant expertise. He chose not to appear to xx Sqn Ldr Hale; and, by making his submission a written statement, he did not tender himself to be xx'd.

94. Mr Brebner's written submission[115] falls to be considered against both the MoD's express lack of objection and the detailed, and appropriately professionally qualified, evidence of Squadron Leader Hale (Retd); the latter, now a private consultant, is himself a former fast-jet pilot of great experience and, more recently, the Officer Commanding the Low Flying Operations Squadron ie he was the man appointed by the RAF, on behalf of military aviation generally, to assess wind farm proposals. There is no tenable basis upon which Mr Brebner's evidence can prevail in the face of the MoD's lack of objection and Sqn Ldr Hale's carefully presented, professional analysis[116].

95. A similar response extends to Mr Day[117] who asserts various aspects of air safety, radar impact etc. Mr Day's assertions do not go beyond generalisations and are completely at variance with the stance of the various aviation consultees. It is, with respect, inconceivable that, had there been any basis for material concern, the MoD – or indeed any other relevant aviation interest - would have failed to lodge objection in the clearest terms; the absence of such objection is eloquent of an absence of any material problem.

[115] OBJ822-AIRSAFETY-POE-BREBNER-SSA-C, OBJ-822-001-Addition to Statement of Case including reply to statement by Mike Hale
[116] Sqn Ldr Hale Response to Mr Brebner CPL-AIRSAFETY-REBUTTAL-HALE-SSA-C; also Sqn Ldr Hale's oral response to Mr Brebner's reply
[117] OBJ-176-0SOC

Matter 12 – The impact of the proposed development on hydrology and hydrogeology, to include impacts on sensitive water features (streams, ponds, wetlands); impacts on private water supplies; fisheries and water courses; and impacts on groundwater; and the likely effectiveness of proposed mitigation measures

96. CP refers to the evidence adduced generally on ecology, and especially the hydrological, and hydrogeological, evidence of Ms Walker and the construction/engineering evidence of Mr Parker in Sessions 1 and 4[118]. In particular, Ms Walker concludes[119]:

> *Construction of the infrastructure and tracks and application of standard engineering practices, as informed by the soils and hydrological conditions on the site, will not cause significant alteration of the current hydrological regime, and therefore there will be no significant change to water quality or quantity to the existing fen and blanket bog peatlands.*

97. Vague and generalised flooding concern, in respect of schemes generally, has been expressed. Whether understandable or not, such concern must yield to the technical analysis of experts and, in the case of LR, to that of Ms Walker who concludes[120]:

> *…the site geology reveals that bedrock is at or near the surface and is relatively impermeable, meaning that much of the rainfall on the site is discharged quickly and there is minimal onsite water storage. Hence the introduction of other impermeable features, such as the control room, will make little difference. The shallow soils overlying the bedrock also have little capacity to store water. Any water storage on the site would be contained within the shallow peaty soil horizons which occur over most of the site, and within the small pockets of deeper peat. These areas have been avoided in construction.*

98. There is no technically competent evidence to challenge Ms Walker's conclusions, whether on the above matters or in any other hydrological and hydro-geological respect. Nor does NRW raise any concerns in this respect. The sole issue relating to hydrology raised originally by NRW as a concern was an asserted potential for in-combination effect from simultaneous erection of various wind farms on the River Wye SAC. NRW agreed during the course

[118] See also CPL-VATT-FWLC-PS-HYDRO-FIGA-S4
[119] CPL-HYRDROLOGY-POE-WALKER-SSA-C para 6.2
[120] CPL-HYDROLOGY-POE-WALKER-SSA-C at para 5.61

of the inquiry, subject to the imposition of appropriate conditions, there was no such likely significant effect. The SAC aspect has been covered under Matter 7 above.

99. So far as concerns LR, no issue remains under Matter 12, whether alone or in combination, to preclude consents issuing.

Matter 13 – The impact of the proposed development on peat

100. Reference again is made to the ecological evidence in Sessions 1 and 4, especially that of Ms Walker, Mr Parker and Mr MacArthur. Additionally, in so far as Mrs Davies refers to peat[121], reference is made to Mr MacArthur's rebuttal[122].

101. NRW has withdrawn its objection in so far as relates to peat[123]. There is no suitably qualified expert evidence of substance to question NRW's acceptance that, subject to the imposition of appropriate conditions, LR will not have any unacceptable impact on peat. No reason for refusal arises under Matter 13.

[121] ALL-S4-POE-06
[122] CPL-ECOLOGY-REBUTTAL-MACARTHUR-S4
[123] CPL-SOCG-010 Peat statement of common ground

Matter 14 – The potential of the proposed development to be connected to the electricity grid network (DECC document 'The consenting process for onshore generating stations above 50 MW in England and Wales: a guidance note on Section 36 of the Electricity Act 1989' refers

102. So far as concerns the main thrust of this Matter, it is unnecessary to elaborate on the fact of LR's being the only scheme where the consent applications for the generating station are proceeding in parallel with applications for the necessary grid connection. As already noted, this places LR at the 'head of any relevant queue'.

103. This Matter also provides the appropriate point at which to touch on sub-station location in the context of resistivity. During Session 3 the Alliance asserted insufficient consideration had been given to siting the Bryn Dadlau sub-station. The Statement by Messrs Parker and Howarth responds to this[124], indicating amongst other things that *...ground conditions at the site have been extensively surveyed and no suitable location for a locally earthed substation has been identified*. The evidence reveals an absence of any alternative sub-station location which is both environmentally acceptable and able to provide a locally earthed option. Nor has the Alliance sought to show that such a location exists. And PCC has found the proposed grid connection acceptable, subject only to the issue of a section of undergrounding; it is thus difficult to understand how the issue of a need to consider an alternative location can here arise, whether as a matter of fact and degree or of law.

104. The preceding point links with the question whether it is technically feasible to have a 'remote earthing' station along the line of the grid connection. This is primarily a matter for evidence from SPM and CP notes the latter's response on this[125]. CP further notes that PCC concludes[126] on this issue that *...PCC ....cannot advise the Secretary of State that* [remote earthing] *is necessary to make the Llandinam scheme acceptable. Further insofar as it has potential to either significantly delay the Llandinam line or to prevent the Llandinam line being upgraded to 160MW (thus causing a step change in infrastructure required elsewhere) PCC would consider the limited benefit from partial use of Trident would not justify those harms.*

105. In the result, (i) the potential to connect LR to the electricity grid network cannot seriously be doubted and (ii) no other grid connection issue(s) exist(s) to warrant any adverse conclusion under this Matter.

[124] CPL-011-Locationof Sub-station-Session 3, especially at para 4.1
[125] SPM/029
[126] PCC Response to SPM/029 'Remote Earthing Paper' at para 10

Matter 15 – Any other matter the Inspector considers relevant

Preliminary

106. CP takes this heading as covering not just matters to which the Inspector has referred but also, in so far as appropriate, various other matters which have been raised by objectors. CP adopts this course in order that, should the Inspector or the Secretary of State view them as material, CP's submissions are recorded. CP refers to its evidence generally but needs here only to mention a couple of elements.

Rights of way etc

107. There can be no serious assertion that LR would result in any materially adverse impacts upon rights of way, whether directly in terms of L&V impacts or safety of users or cultural heritage or indirectly in terms of economic impacts including tourism or in any other relevant way. PCC raises no such objection. And it is unnecessary to rehearse yet again the acceptance by PCC of material visual benefits in a change from the permanent, existing wind farm, with its materially greater number of turbines and resulting clutter, to LR, with its finite life and secured decommissioning. CP relies on the LR environmental material together with the evidence of Messrs Frampton, Welch and Edis. The DVD material produced in co-operation with the BHS in Scotland, featuring Whitelee, is also pertinent; this both demonstrates that equitation can be safely pursued within wind farms and the opportunities for the tracks within such areas to enhance opportunities for riders and horses.

108. In fact, LR in this respect would deliver a significant improvement over the present situation. The existing turbines, in addition to being more numerous, are considerably closer to public rights of way than the proposed turbines. The latter will be at least a distance from public rights of way equivalent to their height from ground to blade tip (as recommended by TAN 8, Annex C, paragraph 2.25).

Community Benefits

109. CP has outlined measures for provision of a community fund. CP stresses that it does not regard such provision as necessary for the development to proceed.

Fire and poisonous chemicals

110. This point was raised by Mr Brown at the Session 4 Evening Session. Amongst other things, it ignores the fact that fire, health and safety aspects of development generally are regulated by the relevant statutory codes. A detailed response on behalf of CP has been provided[127].

[127] CPL-016

Conditions

111. CP refers to, without repeating, the various points it has made in the Conditions Session.

Overall balance

112. Even were LR not a re-powering scheme, the overall planning balance would be positive. And the fact of its being a re-powering scheme (with generally acknowledged benefits over the existing situation), and coupled with its being paralleled by an acceptable, and TAN8-compliant grid connection, puts the matter beyond doubt. The balance drawn in Mr Frampton's proof for the Planning Balance Session is here adopted as though it formed part of these Submissions.

Conclusion

113. CP commends this scheme to the inquiry as one which, for reasons revealed by the evidence called, achieves a positive overall planning balance such that consents sought should issue.

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Temple ANDREW NEWCOMBE QC

29th May 2014