

# MID WALES (POWYS) CONJOINED PUBLIC INQUIRY

## LLANBRYNMAIR WIND FARM

### CLOSING STATEMENT ON BEHALF OF RES UK & IRELAND LTD

#### Introduction

##### Structure of these submissions

1. These closing submissions address the matters about which the Secretary of State (“S of S”) has asked to be advised and a number of the issues raised by other parties. In dealing with these matters we address many of the points made by the various objectors. However, if a point is not directly addressed it should not be assumed that RES has conceded the point – a degree of judgement has to be exercised as to what to cover in closing submissions, and we acknowledge that it is possible that we may have forgotten to deal expressly with some points. Likewise we do not propose to respond to every point made by others in closing, it should not be assumed that we have accepted a point if we have not commented upon it.
2. These closing submissions largely follow the structure of the S of S’s identified issues, to assist the Inspector and S of S in determining the appeal. That inevitably means that RES’s case is not presented in the form it would independently choose. In particular certain matters are covered within one or more of the S of S’s issues rather than being independently addressed and the order in which matters are addressed is largely dictated by the S of S’s structure. It is therefore important that the submissions are read as a whole. Although we have sought to follow the S of S’s structure consideration of the proposal against planning policy (matters 2 and 3) is necessarily informed by

consideration of the other matters and accordingly for ease of presentation we address these matters at the end of this closing.

*The proposal*

3. The application is made by RES UK & Ireland Ltd (“RES”) one of the world’s leading independent renewable energy project developers with operations across Europe, and worldwide.
4. As a respected British company with over 30 years experience of planning, building and operating renewable energy projects, RES has been an established presence at the forefront of wind energy development since the 1970s and has developed and/or built more than 7.5 GW of wind energy capacity worldwide. This includes projects in the UK, Ireland, France, Scandinavia, and the United States, with a large additional portfolio currently in development. In the UK alone, RES currently has more than 1 GW of wind energy projects either constructed, under construction or consented. In 2013 RES was awarded for the second time, the Queen’s Award for Enterprise, on this occasion for International Trade, following recognition in 2005 under the “Sustainable Development” category.
5. In March 2009 RES applied for consent under section 36 Electricity Act 1989 for a wind energy development of up to 43 turbines on land between the villages of Llanbrynmair and Llanerfyl in Powys. In addition to the wind turbines the proposal would provide for the associated infrastructure including on site tracks, underground cabling, crane hardstandings, a communications mast, a permanent 80 metre high free standing lattice wind monitoring mast, electrical transformers, electrical connection works, a substation and control building. As a result of representations made subsequent to the application the proposal has been amended so that it comprises 30 turbines and various amendments have been made to the associated infrastructure<sup>1</sup>.
6. The proposed wind turbines would comprise a conventional design of three blades and a tapered tubular tower. The overall height to blade tip would not

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<sup>1</sup> See Section 2 Powys Cabinet Report 25/9/12

exceed 126.5 metres (415 feet). The ultimate choice of turbine would be subject to a competitive tendering process within the parameters set out. A number of turbines currently on the market would meet all of the relevant criteria for the proposal (including for example noise specifications). The installed capacity of the turbines will depend upon the final turbine choice but can be expected to be within the range of 2 MW to 3 MW which would mean that the proposal would have a total installed capacity of between 60 MW to 90 MW.

7. The wind farm application site is centred on grid reference E294500 N306500. It covers an area of just over 1700 ha (4200 acres) and consists of small to medium sized fields primarily used for grazing sheep and cattle with some fields being cultivated for vegetable crops<sup>2</sup>.
8. In August 2012 the site boundary was revised to incorporate “*the minor access route works from the trunk road network at Llanerfyl*” to the wind farm site<sup>3</sup>. In accordance with requests from PCC and NRW the red-line boundary for these road works has been conservatively drawn to allow discussions at the detailed design stage to consider appropriate details. This means that the red-line includes more land than will be required; it does not indicate that the scope of the works has increased<sup>4</sup>.
9. In February 2014 the site boundary was further amended to address PCC’s proposal for a shared access.
10. The proposal has been subject to extensive environmental appraisal. The original Environmental Statement was produced in 2008 and as a result of issues raised there were prior to the opening of the inquiry 5 sets of Supplementary Environmental Information<sup>5</sup>. As prefigured at the Pre-Inquiry Meeting further Supplementary Environmental Information has been provided as a result of further issues raised.
11. As the application is made under the Electricity Act 1989 the Secretary of State must have regard to the desirability of preserving natural beauty,

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<sup>2</sup> See ES p1 and Section 1 Powys Cabinet Report 25/9/12

<sup>3</sup> Powys Cabinet Report 25/9/12 p5

<sup>4</sup> KM rebuttal para 1.11 – RES-TRANS-REBUTTAL-MARTIN- SSA-B

<sup>5</sup> A summary is set out in Section 3 Powys Cabinet Report 25/9/12

conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest<sup>6</sup>.

12. The extent of the powers and duties in respect of applications under section 36 EA 1989 have been the subject of judicial consideration since the opening of the inquiry. The *Sustainable Shetland* case<sup>7</sup> questioned the established practice and understanding of the application of section 36 and suggested that applications could only be made by licence holders or persons authorised by exemption. However, the *Trump* case has confirmed the established practice that consent under section 36 Electricity Act 1989 can be granted to persons who do not hold a licence under the Act<sup>8</sup>.
13. The *Trump* case further clarifies that the duties imposed by paragraph 1(1) of Schedule 9 to the Electricity Act 1989 do not apply to applicants for consent who are neither licence holders nor authorised by exemption; in such cases whilst the Secretary of State will have regard (under paragraph 1(2)(a)) to the desirability of the matters mentioned in paragraph 1(1)(a) he should proceed on the basis that the applicant is not under any duty to comply with paragraph 1(1)<sup>9</sup>.
14. It is important to note that the obligation on the Secretary of State under paragraph 1(2)(a) of Schedule 9 to the Act is to *have regard to the desirability* of the matters mentioned in paragraph 1(1)(a) – it is not a requirement to achieve any of those matters.
15. In the light of PCC's position with respect to the access proposals for Llanbrynmair it will be necessary to return to consider these issues later in these submissions.

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<sup>6</sup> See section 38 and Schedule 9(2)(a) – SOCG – Policy – 001 para 5.4 – RES Opening Session SOC para 1.3

<sup>7</sup> *Sustainable Shetland v Scottish Ministers* 2013 SLT 1173

<sup>8</sup> *Trump International Golf Club Scotland Ltd v The Scottish Ministers* 2014 SLT 406 @ paras 33 – 36 & 45

<sup>9</sup> *Trump International Golf Club Scotland Ltd v The Scottish Ministers* 2014 SLT 406 @ paras 34 – 36

### Issues in dispute

16. Quite properly the S of S wishes to be informed of numerous matters. It is normal for a large number of issues to be raised and considered at an inquiry of this nature. Despite this at the outset it can be observed that the main issues raised by the various objectors were always more limited and have become even more limited during the course of the inquiry.
17. In essence PCC's only objection to the proposal arises from the use of the Llanerfyl to Talerddig road for deliveries by AILs. It is notable that there is no objection to the details of the wind farm development. Whilst NRW did raise some issues with respect to the wind farm development it became apparent during the course of the inquiry that these matters did not go to the principle of the wind farm development and did not lead to the conclusion that any particular turbines should be removed from the development. Mr Minto's comments in section 4 of his overall balance proof do not reflect the evidence given by NRW and the concessions made in XX (perhaps not surprising as he explained that he had simply based his evidence on reading the proof without any knowledge of what had occurred at the inquiry) - nor do they make clear what NRW's position is. They sadly reflect the difficulty in getting a clear and consistent position from NRW and its often changing position on the application

### Overview

18. In summary whilst the S of S wishes to be informed about a wide number of matters there is no dispute or controversy about most of them so far as the main parties are concerned. In the limited number of matters where a dispute remains the dispute is limited to issues arising with respect to the delivery of AILs rather than the development of the wind farm itself. The fact that there is no objection to the substance of the wind farm development from the two principal objectors and that in essence concerns were restricted to the route for delivery of AILs is an important point to note at the outset. The absence of any substantial objection to the development of these 30 turbines is an important factor in support of these proposals to be weighed against any

residual concerns raised with respect to the impacts of the works associated with delivery of AILs to the site.

19. Consideration of the merits of this appeal therefore takes place against the background of there being very limited objection from the local planning authority or any public body or statutory consultee. Against the outstanding objections it is of course necessary to balance the very strong policy support for this form of development in general and the background of the identification of this site in local and regional policy as a suitable site for this form of development in particular.

**Need and government policy on energy and climate change – S of S matter**  
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20. The proposal must be viewed against the pressing need to address climate change and improve the country's security of energy supply. There is widespread national and international recognition of the problems arising from climate change, the need to reduce carbon dioxide emissions and provide more electricity from renewable sources. The EU Climate and Energy package (formally agreed April 2009) commits the EU to achieving a reduction in EU greenhouse gas emissions of 20% by 2020 compared to 1990 levels and included a binding renewable target of 20%. The UK's share of this target is to deliver 15% renewable energy by 2020 which compares with a figure of 3.8% in 2011<sup>10</sup>. Under EU Decision 406/2009/EC the UK has a binding target of a 16% reduction in greenhouse gas emissions by 2020 compared to 2005 emissions levels. Not surprisingly, the UK Renewable Energy Strategy (UK RES) states that the UK needs to increase radically its use of renewable energy<sup>11</sup>.

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<sup>10</sup> See SOCG – Policy – 001 4.1 – 4.5

<sup>11</sup> SOCG – Policy – 001 5.11

21. As part of this drive towards reducing greenhouse gas emissions and increasing renewable energy production licensed electricity suppliers are subject to legally binding Renewables Obligations (RO). The RO started at 3% in 2002 and increases annually. The target for 2008-9 was 9.1% rising to 15.4% in 2010, but the UK is behind these targets with only 6.8% in 2010. Quite apart from government targets there is therefore a need for additional sources of renewable energy to enable the electricity suppliers to fulfil their legal obligations<sup>12</sup>. Further legal requirements are imposed by the Climate Change Act 2008<sup>13</sup>.
22. The importance of achieving these aims and the difficulties in achieving them has been reiterated on numerous occasions by the coalition government; for example in the Energy Statements<sup>14</sup>, the National Renewable Energy Action Plan for the UK<sup>15</sup>, the Carbon Plan<sup>16</sup> and the UK Renewable Energy Roadmap and Updates<sup>17</sup>.
23. Although the primary driver of legislation and policy in this area is undoubtedly the importance of tackling climate change and ensuring security of energy supply it is also important to remember that there are significant economic and employment benefits associated with the development of renewable energy as is recognised for example in the UK Renewable Energy Strategy<sup>18</sup>.
24. The Secretary of State's policy on these matters is set out in the National Policy Statements (NPSs). These NPSs were presented to Parliament. The NPSs were prepared under the provisions of the Planning Act 2008 and apply directly to NSIP applications determined under the Planning Act 2008. The current proposals are the equivalent of NSIP applications but fall to be determined under the earlier provisions of the Electricity Act 1989 on account of the dates of the applications. Although the NPSs do not apply directly to the applications in the manner that they do to applications under the Planning

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<sup>12</sup> SOCG – Policy – 001 5.5 – 5.7

<sup>13</sup> SOCG – Policy – 001 5.9 – 5.10

<sup>14</sup> SOCG – Policy – 001 5.26 – 5.30

<sup>15</sup> SOCG – Policy – 001 5.31 – 5.35

<sup>16</sup> SOCG – Policy – 001 5.37 – 5.48

<sup>17</sup> SOCG – Policy – 001 5.49 – 5.56

<sup>18</sup> SOCG – Policy – 001 – 5.16

Act 2008, they clearly form the up to date policy basis for determination of projects of this nature and scale and substantial weight should be attached to them<sup>19</sup> as the Secretary of State has recognised and confirmed<sup>20</sup>.

25. The NPSs recognise and seek to address the national imperative to deliver further renewable electricity generation. For example they provide –

- i) *"...The need for new renewable electricity generation projects is therefore urgent"* (NPS EN 1 at 3.4.5);
- ii) *"As part of the UK's need to diversify and decarbonise electricity generation, the Government is committed to increasing dramatically the amount of renewable generation capacity...In the short to medium term, much of this new capacity is likely to be onshore and offshore wind..."* (NPS EN 1 at 3.3.10);
- iii) *"...it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts"* (NPS EN 1 at 3.2.3).

In the context of a proposal of this nature and scale the NPSs make it plain that the need for the development is a given and is not open to challenge or discussion<sup>21</sup>.

26. The need to address these matters must be considered with a proper recognition of the vital role that energy in general and electricity in particular plays in maintaining our current way of life and living standards –

*"Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to produce and transport food; to travel to work around the country and the world. Our businesses and jobs rely on the use of energy. Energy is essential for the critical services we rely on – from hospitals to traffic lights and cash machines. It is difficult to overestimate the extent to which our*

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<sup>19</sup> RES Opening Session SOC para 1.6 and see for example NPS EN1 paras 1.1.1, 1.2.1, 1.4.1 and 1.5.1 and NPS EN3 paras 1.1.1, 1.2.1, 1.2.3

<sup>20</sup> SOCG – Policy 001 2.9

<sup>21</sup> RES Opening Session SOC para 1.3(2<sup>nd</sup>)

*quality of life is dependent on adequate energy supplies.*” (NPS – EN1 para 3.2.1)

27. The Government considers it essential that there should be a step change in the provision of renewable energy and clearly envisages that the new NPSs will produce this step change<sup>22</sup>. Whilst addressing climate change is a very important element of the drive towards the provision of increased renewable energy it is not the only driver. Equally important are the promotion of energy security and also the very significant economic development and employment generation arising from such development<sup>23</sup>. The Government seeks large scale deployment of renewables to meet these aims (including large scale schemes such as the current proposals). These aims of improving energy security and promoting economic development are all the more important given the current state of the economy.
28. The Powys CC officer’s report correctly categorised the position when advising that if development contributes to meeting the energy need and is in accordance with NPS EN1 consent should be given<sup>24</sup>. It must further be recognised that development on the scale required to meet the energy needs identified and to satisfy the Government’s policy will inevitably have impacts. Indeed NPS EN1 advises that it will not be possible to develop the necessary amounts of infrastructure without some significant residual impacts<sup>25</sup>. The mere identification of impacts does not establish any conflict with policy. Even in the event the proposal is found to give rise to any residual harm this needs to be weighed against the acknowledged urgent national need to deliver new renewable energy generation capacity<sup>26</sup>.
29. The need for increased production of renewable energy is also recognised in the Welsh Government’s energy and climate change policies. The Welsh Government is under a statutory obligation to promote sustainable development<sup>27</sup> and it has recognised the need radically to reduce use of

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<sup>22</sup> NPS EN1 para 1.7.2 1<sup>st</sup> bullet point

<sup>23</sup> NPS EN1 para 3.4.2

<sup>24</sup> SOCG – Policy – 001 para 2.17

<sup>25</sup> NPS EN1 para 3.2.3

<sup>26</sup> SOCG – Policy – 001 para 2.16

<sup>27</sup> SOCG – Policy – 001 para 6.4

carbon-based energy<sup>28</sup> and to revise upwards targets for renewable energy<sup>29</sup>. The Welsh Government's Energy Policy Statement in 2010 evinced an aim to have 4.5 kWh/d/p of installed wind generation capacity by 2015/17 which was to be achieved inter alia by “*optimising the use of the existing strategic search areas set out in Technical Advice Note (TAN 8)*” and providing sensitively designed new grid connections<sup>30</sup>. The contribution of renewable energy development to the economic revival of Wales is recognised in the Welsh Government report *Economic Revival: a new direction* published in July 2010<sup>31</sup>. These aims are reiterated in the more recent Welsh Government document *Energy Wales: a low carbon transition*<sup>32</sup>.

30. The urgent importance of addressing climate change and providing for greater renewable energy production is also recognised in planning policy in Wales. The Wales Spatial Plan update 2008 for instance recognises the need to act now and the crucial role that Central Wales has in delivering the necessary renewable energy capacity<sup>33</sup>. The land use planning policies of the Welsh Government are set out in Planning Policy Wales (PPW) which states that tackling climate change is a fundamental part of delivering sustainable development based on a scientific imperative to act urgently to reduce greenhouse gas emissions<sup>34</sup>. Section 12.8 of PPW sets out specific provisions for renewable and low carbon energy. The section provides for a rise from 0.7 GW of onshore wind capacity to 2GW by 2015/17<sup>35</sup>. It is furthermore important to note that of the 22.5 GW renewable energy sought in this section 12.5 GW is accounted for by tidal and wave technologies which are unlikely to be forthcoming in the required timescales; this places even more importance upon the provision of onshore wind energy which offers a mature and proven technology which can be delivered in the necessary timescales<sup>36</sup>.

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<sup>28</sup> SOCG – Policy – 001 para 6.5

<sup>29</sup> SOCG – Policy – 001 paras 6.6 and 6.10

<sup>30</sup> SOCG – Policy – 001 para 6.12

<sup>31</sup> SOCG – Policy – 001 paras 6.14 – 6.17

<sup>32</sup> SOCG – Policy – 001 paras 6.20 - 6.21

<sup>33</sup> SOCG – Policy – 001 paras 7.4, 7.6 and 7.9

<sup>34</sup> SOCG – Policy – 001 para 7.16

<sup>35</sup> SOCG – Policy – 001 para 7.18 this remains the position in PPW 6<sup>th</sup> Edition

<sup>36</sup> SOCG – Policy – 001 paras 7.18 – 7.19

31. PPW paragraph 12.8.5 provides that local planning authorities, particularly those containing SSAs should take the Welsh Government's *imperative* for renewable energy into account when consulted on applications such as the current proposals. Paragraph 12.8.13 explains that the SSAs are "*areas in Wales which, on the basis of substantial empirical research, are considered to be the most appropriate locations for large scale wind farm development*" whilst paragraph 12.8.14 explains that whilst cumulative impacts within SSAs can be a material consideration, it must be balanced against the need to meet the Welsh Government's renewable energy aspirations. The policy approach taken in Wales has been to identify 7 SSAs that are intended to deliver more than three-quarters of Wales' renewable energy contribution from onshore wind by 2017<sup>37</sup>.
32. Technical advice to supplement PPW is provided by TAN 8 which is stated to be relevant to determination of applications under the Electricity Act 1989<sup>38</sup>. This flowed from extensive technical work undertaken by consultants on behalf of the Welsh Government which led to the conclusion that for efficiency and environmental reasons large scale onshore wind farms should be concentrated in defined SSAs<sup>39</sup>. Each SSA has an indicative target for installed capacity to be built and connected by 2010. These figures are advanced in order to assist the planning process but are not to be seen as the definitive capacity for the areas<sup>40</sup>. The TAN recognises that the construction of new high voltage distribution and transmission lines will be vital to the realisation of the Welsh Government's approach<sup>41</sup>
33. The technical work underpinning the production of TAN 8 had identified a capacity of 1666 MW throughout the 7 SSAs but given that the target for 2010 was an additional 800MW from these areas this was reduced by one-third in TAN 8 to a total of 1120 MW to provide a degree of flexibility at local level<sup>42</sup>. Against these figures the delivery to date can only be described

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<sup>37</sup> SOCG – Policy – 001 para 7.24

<sup>38</sup> SOCG – Policy – 001 para 7.27

<sup>39</sup> SOCG – Policy – 001 para 7.28

<sup>40</sup> SOCG – Policy – 001 para 7.29

<sup>41</sup> SOCG – Policy – 001 para 7.33

<sup>42</sup> RES Opening Session SOC para 2.4

as very disappointing with only some 110.45 MW consented and implemented by 2010<sup>43</sup>.

34. The position with respect to SSA capacities has now changed since the 2010 target date has passed, with the Energy Minister confirming in a letter in 2011 that the capacity should be taken as that set out in the technical work namely 1666 MW for the 7 SSAs and in the case of SSA B 430 MW<sup>44</sup>. The current position is that only about half of the identified capacity (842 MW) has been consented throughout the SSAs and only 300 MW of that has been constructed (less than one-fifth of the capacity or just over one-quarter of the originally identified TAN 8 figure)<sup>45</sup>. It is also clear that the major under-performance has arisen in areas B, C and D. In area B only 100 MW of the identified 430 MW has to date been consented<sup>46</sup>. Given the imperatives identified above it is critical that development be brought forward within area B without any further delay<sup>47</sup>.
35. The Llanbrynmair proposal falls within SSA B. As such consideration of the proposal must take place not only against the background of the established need for and importance of proposals of this nature but also the prior identification of this area as a suitable and critical location for directing this form of development<sup>48</sup>. Further impetus is provided by the failure to date to deliver the much needed levels of wind energy development within SSA B.
36. Although much work was undertaken in preparing TAN 8 Powys CC then commissioned ARUP to undertake refinement studies of the SSA. An initial refinement exercise was undertaken in 2006. This resulted in a radical change to the extent of SSA B but it is significant that all of the current proposal for the Llanbrynmair wind farm fell within this reduced area<sup>49</sup>. This refinement exercise was subsequently reviewed in 2008. As a result of the review exercise the proposed areas were revised such that all of the Llanbrynmair wind farm proposal fell within it (including those turbines which no longer

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<sup>43</sup> RES Opening Session SOC paras 2.5-2.6

<sup>44</sup> RES Opening Session SOC para 2.8

<sup>45</sup> RES Opening Session SOC paras 2.9 – 2.10

<sup>46</sup> RES Opening Session SOC paras 2.9 – 2.11

<sup>47</sup> RES Opening Session SOC para 2.11

<sup>48</sup> RES Opening Session SOC para 1.4(2<sup>nd</sup>)

<sup>49</sup> RES Opening Session SOC paras 5.2 and 5.3

form part of the application)<sup>50</sup>. Thus it can be seen that within SSA B the most appropriate areas for development have been considered on 2 occasions by consultants on behalf of Powys CC who have concluded that the area of the Llanbrynmair proposal comes within the most suitable locations for this form of development. Furthermore it is important to remember that these reviews were undertaken at a time when the lower figures for the capacity of SSA B were being used<sup>51</sup>.

37. On any view this proposal must be considered against a background of this area having been repeatedly identified as suitable for this form of development and the critical need for this area to contribute towards the pressing need for further renewable energy development. The proposal would make an important contribution to the necessary additional renewable energy development required to enable the Governments (UK and Welsh) to meet their various legal obligations with respect to sustainable development and renewable energy in an area to which such development is directed.

38. As the application is made under the Electricity Act the provisions of section 38 Planning and Compulsory Purchase Act 2004 do not apply<sup>52</sup>, however, the development plan is a relevant consideration to take into account. In this case the development plan is the Powys UDP adopted on 1<sup>st</sup> March 2010<sup>53</sup>. The UDP acknowledges the weight of international, European, UK and Welsh policy and the imperative to promote the use of renewable energy<sup>54</sup> and considers it to be desirable for the Council to be more pro-active in steering wind power developments to areas that would be most acceptable<sup>55</sup>. In this context the repeated identification of the area within which Llanbrynmair is located as a suitable location for this form of development is particularly significant. UDP policy E3 sets out a number of criteria to be considered in assessing applications for wind farms. Whilst it will be appropriate to

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<sup>50</sup> RES Opening Session SOC para 5.4

<sup>51</sup> RES Opening Session SOC paras 5.2 – 5.4

<sup>52</sup> See *R (Samuel Smith Old Brewery (Tadcaster)) v SSECC [2012] EWHC 46 (Admin) [2012] 2 All ER 849*

<sup>53</sup> SOCG – Policy – 001 para 8.1

<sup>54</sup> SOCG – Policy – 001 para 8.7

<sup>55</sup> SOCG – Policy – 001 para 8.6 – UDP para 12.9.1

consider the issues raised by this policy they are to a large extent matters which would be considered in any event.

39. The proposal is fully consistent with the objectives of 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 the Government's climate change goals. This is an important factor in support of the proposal.
40. The proposal is further supported by the various Welsh Government policies. Whilst this application should be determined on the basis of UK Government policies and the Secretary of State is not bound by either, Welsh Government policy, or development plan policy, the support for this development from both those sources, and the need for this development if those other policies are to be fulfilled, lends further support for this proposal.

**Individual and combined landscape and visual impact – S of S matter 4**

41. The scale of wind turbines is such that they must inevitably have some landscape and visual impact wherever they are located and such impacts always figure large in any consideration of wind farm proposals<sup>56</sup>. Views differ as to whether such impacts are generally positive or negative<sup>57</sup>, but given the inevitability of such impacts the clear national and local policy support for this form of development means that a degree of impact must be acceptable<sup>58</sup>. In this case the starting point for consideration of those impacts is that this is an area repeatedly identified as an area to which such development is directed.
42. The application site comprises both the wind farm site and the local access road. The wind farm site comprises an area of upland grassland with blocks of coniferous woodland on a gently undulating plateau and falls within both

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<sup>56</sup> MvG 7.18 & 8.9

<sup>57</sup> MvG 4.3

<sup>58</sup> MvG 4.6 & 7.3

the TAN SSA B and the PCC Refined Boundary of Strategic Search Area (SSA B)<sup>59</sup>. The local access road is the existing county highway which runs from Llanerfyl to Talerddig, in part classified as the C2031 and in part the U2319.

43. At the regional level the application site falls within the Cambrian Mountains RCA and at the county level the Dyfnant Forest/Llanbrynmair Moors LCA<sup>60</sup>. The wind farm site spans three LANDMAP Visual and Sensory Aspect Areas, being the Banwy Forest Aspect Area, the Banwy Upland Aspect Area and the Pen Coed Upland Aspect Area<sup>61</sup>. The local access road passes through the Llanerfyl Mosaic Visual and Sensory Aspect Area and the Carno Grazing Visual and Sensory Aspect Area<sup>62</sup>.
44. The application site is about 5 km from the southern boundary of Snowdonia National Park. However, the application site does not fall within any national or county level landscape designations. Whilst the area is undoubtedly valued by local people this can probably be said of any open area which may be suitable for this form of development. Important as local views are, in considering this form of proposal it is necessary to consider the area in question in a wider perspective. In this context the absence of national and county level landscape designations indicates that the site is not valued at the national or county level for its landscape or scenic quality<sup>63</sup>.
45. The proposed wind farm and access proposals have been designed to limit potential landscape effects. Extensive work has been done to reduce the impacts inevitably associated with the development of a wind farm. This has included careful consideration of siting so as to limit impacts, and a reduction in the number of proposed turbines for visual reasons. In addition the length of onsite tracks has been minimised and borrow pits have been located close to tracks to minimise the length of new tracks required<sup>64</sup>. Careful consideration was given to the location and mitigation of the substation which was relocated near to the proposed Carnedd Wen substation at the request of

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<sup>59</sup> MvG 7.1 & CSEI 4.5.3

<sup>60</sup> MvG 7.4

<sup>61</sup> MvG 7.5

<sup>62</sup> MvG 7.6

<sup>63</sup> MvG 7.3

<sup>64</sup> MvG 6.2 & 7.14

NRW and earth mounding has been designed to blend into the natural contours of the hillside and to provide visual screening of the substation<sup>65</sup>.

46. Technical requirements inevitably affect what can be done with respect to the local highway works, but those works have been guided by very careful consideration of landscape and visual impacts. There have been extensive refinements of the highway design to limit and mitigate any impacts. These include minimising loss of landscape features and using grass reinforcement surfacing for road widening and laybys. Where mature trees need to be removed appropriate replacement trees will be planted at a variety of sites to ensure optimum establishment and survival rates. Where hedges are lost replacement hedges will be planted and new hedges will be provided where hedges are currently missing. Stone facing will be used on new retaining structures to blend them into their rural setting and the condition of features will be improved. The landscape edge treatment along the full length of the road will be subject to landscape management subject to a landowner agreement<sup>66</sup>.

47. In common with any windfarm the proposal can be anticipated to have a significant impact upon the application site and immediately adjacent area. It will also have a relatively limited number of visual impacts. This will include impacts arising from highway works to provide access to the site. However, as could be expected from the repeated identification of this area as an area to which such development should be directed the proposal is capable of being appropriately assimilated into the landscape and would not give rise to impacts of a nature to warrant refusal.

48. It can be expected that a proposal of this scale will not satisfy everybody. Some persons are simply opposed to wind farm development others are understandably anxious about possible impacts in their local area. What is notable is that objections with respect to the wind farm itself are comparatively limited, indeed PCC accept that there is no objection to the wind farm and they limit their objections to the impact of the works to the local road whilst NRW's concerns with respect to the wind farm are limited

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<sup>65</sup> MvG 6.5

<sup>66</sup> MvG 6.7

to impact upon the Glyndwr's National Trail and the cumulative impact in association with Carnedd Wen of the proposal upon the National Park. The limited nature of the objections raised is a reflection of the prior identification of this area as a suitable area for this form of development and the care given by the applicant to limiting and mitigating any impacts. We turn to address the issues raised in particular by NRW and PCC.

NRW concerns with respect to the wind farm site

49. Before considering the specific issues raised by NRW it is appropriate to address some of the further points made by JC in his evidence on behalf of NRW.
50. In places in JC's evidence on behalf of NRW it appeared to be argued that the proposals failed to enhance the quality of the area and that this is a criticism which could be made of the proposals<sup>67</sup>. However, JC accepted in XX that it is not a requirement of policy that proposals of this nature should enhance the quality of the area and that such an approach would be contrary to the express acceptance in NPS that the Government commitment to a dramatic increase in renewable energy, which it considers to be essential<sup>68</sup>, will inevitably have negative impacts<sup>69</sup>. Indeed TAN 8 records that it is an implicit objective to accept a significant change in landscape character from wind turbine development within the SSAs<sup>70</sup>, whilst at the local level PCC has concluded that the accepted consequence of TAN 8 is that the SSAs will become wind farm landscapes<sup>71</sup>. JC agreed with these conclusions with the limited qualification that not all of an SSA need become a wind farm landscape. Importantly he confirmed that NRW supports the approach of SSAs in PPW and TAN 8<sup>72</sup>, that he and they take no issue with the identification of SSA B

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<sup>67</sup> See for example JC 3.20

<sup>68</sup> NPS EN1 3.3.10, 3.3.11

<sup>69</sup> See for example NPS EN1 1.7.2, 1.7.11, 3.2.3, 5.9.8, - NPS EN3 2.7.2, 2.7.48

<sup>70</sup> See JC 3.16 and TAN 8 Annex D

<sup>71</sup> See Interim Development Control Guidance 2008 para 11.1 CD Com 19

<sup>72</sup> JC 1.7 and XX

or its boundaries<sup>73</sup>, and that they considered that the SSAs had been identified on the basis of substantial empirical research as the most appropriate locations<sup>74</sup>.

51. JC's references to enhancement arose from a consideration of a number of generic UDP policies. It is of course important to remember that the development plan does not have the same status in applications under the Electricity Act and that the weight to give to the development plan will also be affected by national policy. However, when consideration is given to the UDP there are specific policies which address wind farm development and JC agreed in XX that in so far as it is relevant to assess these proposals against the UDP it is against those specific policies that the assessment should be undertaken – this again reflects PCC's public position<sup>75</sup>. JC agreed in XX that the particularly relevant policy is E3 (p166 CD Com 6) and that the test repeatedly set out in that policy is that the proposal should not unacceptably adversely affect landscape quality and that even then consideration could be given to mitigation.

52. Ultimately JC agreed with MvG that it is not possible for all aspects of the development to complement or enhance the character of the surrounding area and that an implicit objective is to accept landscape change as it was inevitably accepted that this form of development cannot complement or enhance open areas<sup>76</sup>. It is important to note as JC accepted in XX (in agreement with MvG<sup>77</sup>) that even though there is no requirement to complement or enhance the area where it is possible for elements of the development to complement or enhance the character of the area they had been designed to do so and that this included the improvement in quality and increase in the extent of hedgerow, the removal of coniferous forestry plantation and the restoration of open moorland and bog.

53. JC did make a surprising mistake with respect to TAN 8, suggesting that at the time of its preparation it would have contemplated smaller turbines so that

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<sup>73</sup> JC XX

<sup>74</sup> JC XX and see PPW 12.8.13

<sup>75</sup> See IDCG 2008 para 5.4 CD Com 19

<sup>76</sup> JC XX and MvG rebuttal 1.20

<sup>77</sup> See MvG rebuttal 1.21

the impact of modern turbines would be much greater than previously envisaged<sup>78</sup>. In fact TAN 8 expressly addressed turbines up to 145 metres in height<sup>79</sup>. In consequence JC's assessment of impacts inevitably proceeds from a mistaken belief that impacts are greater than they are and/or greater than anticipated in TAN8.

54. NRW's concern with respect to the impact of the development on Glyndwr's Way is limited to those turbines which are said to "straddle" the way. There is some confusion in JC's evidence as to which turbines are said to give rise to this concern. Whilst his proof of evidence refers to a number of turbines<sup>80</sup> the proof confirmed that the concern was limited to 3 turbines (see JC 3.7); however, in examination in chief he suggested that the turbines about which he was concerned were R14, R15, R16 and R24. The relationship of these turbines to Glyndwr's Way is illustrated in Figure 12.1 of the CSEI. In addition to the turbines JC also raised some concern about the impact of the substation.

55. JC's concern with respect to these turbines appears to be that this part of the trail will pass through what would become a wind farm landscape<sup>81</sup>. This is an internally illogical objection given that his evidence was that the inevitable consequence of TAN 8 and the identification of SSA B (which he supports) would be that a wind farm landscape would be created<sup>82</sup>.

56. Furthermore the impact on Glyndwr's Way must be put in context. It is a long distance national trail (135 miles long<sup>83</sup>) which passes through extensive areas of SSA B. Given its route through SSA B it is inevitable that there will be a degree of impact upon it and this must implicitly have been accepted with the designation of SSA B; furthermore the impact in this localised area has to be seen in the context of the overall length and variety of the national trail.<sup>84</sup> There is no particular character of the trail or any particular

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<sup>78</sup> See JC 3.17

<sup>79</sup> See TAN 8 Annex C Figure 1 and para 2.4 and Annex D para 6.4 and MvG rebuttal 1.24

<sup>80</sup> See for example JC para 6.8

<sup>81</sup> JC 3.8 & 6.6

<sup>82</sup> See MvG rebuttal 1.28

<sup>83</sup> MvG 8.12

<sup>84</sup> MvG rebuttal 1.30

importance associated with its passage through the application site in general or the particular length about which JC raised concerns.

57. In addition whilst the experience of this part of the route will change as a result of the wind farm proposal it is important to take a balanced view on this. Whilst some people may not like the presence of the turbines other elements of the experience will be improved by the opening out of views as a result of the associated tree-felling.
58. Whatever view is formed as to the impact of the proposal upon Glyndwr's Way a fundamental factor to keep in mind is that the relevant length of the trail is merely a permissive route. It would be open to the landowner to prevent access to this length of the trail at any time. Given that the route could be closed at any time by the landowner it could not be right or sensible to consider impact upon the route as a reason for resisting these proposals as it would be open to the landowner to address any perceived problem by closing the route.
59. The proximity of the route to the turbines in question has been recognised in the application. There is a bridleway to the north of this section of Glyndwr's Way which connects with Glyndwr's Way to the north-west of turbine 14 and to the east at Neinthirion. A new permissive route is proposed which connects with this bridleway. Use of the new permissive route and the bridleway would provide the opportunity for walkers on Glyndwr's Way to pass through this area whilst maintaining a distance of at least 200 metres from any turbine as shown in Figure 12.1 of the CSEI.
60. The other point raised about the details of the wind farm concerned the substation which again appeared to be related to the views from Glyndwr's Way. JC acknowledged in XX that the location of the substation had been moved in accordance with NRW's request and he stated that the location was acceptable. MvG explained that careful consideration had been given to the location and mitigation of the substation, and the photomontages from viewpoints 1, 2 and 6 demonstrate that there will be very limited visibility of the substation<sup>85</sup>. JC accepted all of this; his point appeared to be that there

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<sup>85</sup> See MvG 6.5, 6.6, 8.6 and rebuttal 1.26

would be other infrastructure particularly overhead lines as part of the grid connection which would be associated with the substation. Such infrastructure is an inevitable consequence of development of a wind farm anywhere within SSA B (or elsewhere) and in reality it has been implicitly accepted by TAN 8 and all of the supporting policy to which reference has been made. As the substation is suitably designed and screened in a suitable location the presence of the inevitable and necessary grid connection cannot provide any sensible objection to the proposal.

61. JC did not suggest that the wind farm proposal should be rejected as a result of any impact upon Glyndwr's Way. His position essentially was that the opportunity should be taken to limit any impacts. He did not suggest that this required or justified any further reduction in the number of turbines. Indeed he accepted in XX that a requirement to reduce the number of turbines as a result of any impact upon Glyndwr's Way would not accord with the guidance in paragraph 5.9.21 of NPS EN1. He did not suggest that there was any further practical step which could be taken to reduce the impact of the turbines upon Glyndwr's Way. Similarly he did not suggest that any more should be done to reduce any impact associated with the substation.
62. In the circumstances there is no evidence to suggest that the proposal has an unacceptable impact upon Glyndwr's Way or that there is any basis for requiring any further measures to be taken to reduce the impact upon Glyndwr's Way.
63. The other issue raised by NRW is impact upon the National Park.
64. At the outset it is important to note that there is no suggestion that the Llanbrynmair proposal alone has any impact upon the National Park; the concern is limited to the cumulative impact of Llanbrynmair in combination with Carnedd Wen<sup>86</sup>. However, NRW raise an objection to Carnedd Wen alone because of its impact upon the National Park. The important point to note therefore is that in so far as impacts upon the National Park are a concern it is a problem associated with Carnedd Wen in any event. There is nothing in the evidence to suggest that Llanbrynmair adds materially to the

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<sup>86</sup> JC XX and JC 3.26, 3.28, 5.12 to 5.16 and 5.18

impact of Carnedd Wen. The essential point is that if the concerns about impacts upon the National Park were found to have any merit they would provide a reason for resisting the Carnedd Wen proposal not the Llanbrynmair proposal and in that event in the absence of the Carnedd Wen proposal there would be no cumulative impact in any event. In the circumstances even were there to be a concern about cumulative impact upon the National Park it cannot rationally provide a ground for resisting the Llanbrynmair proposal.

65. There is furthermore no substance in JC's concerns about cumulative impact on the National Park.
66. It can be seen at the outset that JC's concerns about the National Park are founded upon an analysis of the blade-swept area of the turbines<sup>87</sup>. This is surprising given that this approach has been regularly rejected by Inspectors<sup>88</sup>. The blade-swept area does not provide any meaningful information with which to assess the impact of the proposals.
67. The National Park is some 5.8km from the nearest turbine. Whilst the turbines will be visible from the National Park this is an inevitable consequence of wind turbine development anywhere within SSA B. The boundaries of the SSA have been set (and twice reviewed by PCC) with full knowledge of their relationship to the National Park. Given that any wind turbine development within the SSA will be seen from the National Park the mere fact that the turbines will be visible cannot be a ground for objection. Similarly given the drawing of the SSA boundaries there can be no in principle objection to their being seen at a distance in the order of 5km.
68. NPS EN1 advises that the fact that a proposed development will be visible from a designated area such as a national park should not in itself be a reason for refusing consent<sup>89</sup>. The advice is that whilst regard must be had to the purposes of national parks when considering applications for projects outside their boundaries which may have impacts within them, the aim should be to

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<sup>87</sup> JC 5.25

<sup>88</sup> See for example paragraph 21 of the Nuts Grove decision letter – CD/COM/INS/010

<sup>89</sup> NPS EN1 para 5.9.13

avoid compromising the purposes of designation<sup>90</sup>. MvG considered the special qualities of the National Park. It is plain that some of the special qualities are not landscape-related and that this type of proposal could not impact upon them. When consideration is given to the landscape-related special qualities none of them will be affected by this proposal even in combination with Carnedd Wen<sup>91</sup>.

69. In summary (i) there is no objection to the impact on the National Park of Llanbrynmair alone, (ii) in so far as an objection is raised with respect to the cumulative impact of Llanbrynmair and Carnedd Wen upon the National Park, it is clear that Carnedd Wen is the source of the alleged impact and there is no evidence that Llanbrynmair adds materially to that impact, (iii) the issue is therefore simply whether Carnedd Wen should be rejected as a result of this impact, (iv) visibility from the National Park does not in itself provide any ground for objection, (v) the relevant test is whether the cumulative impact would compromise the purposes of designation, (vi) there is no evidence that the proposals would compromise the purposes of designation and MvG's analysis establishes that they would not. In the circumstances the impact upon the National Park does not provide a ground for resisting the development.

*PCC and NRW concerns with respect to the access road*

70. Both PCC and NRW now raise objections to the impact of the necessary highway works to the local access road. Indeed it is the only objection identified by PCC in its Session 2 SSA B statement of case. Given the significance now attached to this point by both PCC and NRW it is important to note how they came to this position.

71. It is self-evident that the turbines would need to be delivered to any site, wherever it might be located within an SSA, and that the deliveries would

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<sup>90</sup> NPS EN1 para 5.9.12

<sup>91</sup> See MvG 7.19, 7.21, and rebuttal 1.25, 1.27

involve AILs which may be expected to result in requirements for modifications of local roads. This would clearly be in the minds of WG, PCC and NRW (CCW) when the SSAs were considered. The nature of local roads within the area would likewise be known to these bodies and there was (and still is) no requirement that access should only be from trunk roads or similar roads.

72. At the outset RES gave consideration as to how to achieve a satisfactory access to the site. For the reasons explained in the 26<sup>th</sup> June memo<sup>92</sup> and 5<sup>th</sup> July 2013 letter<sup>93</sup> it was from an earlier stage concluded that the appropriate way to access the site would be via the Llanerfyl to Talerddig road.

73. Neither PCC nor NRW (CCW) suggested that this was an inappropriate route to take. Indeed NRW (CCW) in its letter of 20<sup>th</sup> January 2010<sup>94</sup> objected to Carnedd Wen on the grounds that its proposed access would have an adverse impact upon the National Park and that this could be avoided if it made use of the proposed access on the Llanerfyl to Talerddig road<sup>95</sup>. This letter was supported by advice from JC which stated amongst other things –

*“We note that substantial upgrades are being proposed to the minor road through the Nant yr Eira valley between Llanerfyl and Talerddig to access a number of other proposed wind-farms in this SSA including the Llanbrynmair South wind-farm which is adjacent to Carnedd Wenn.*

*We consider that the impact of the main access route into the site on the Park could be mitigated by sharing of the Nant yr Eira route by both wind-farms.”<sup>96</sup>*

74. It is fair to observe that when consulted upon the Llanbrynmair proposal NRW (CCW) raised concerns that RES and RWE had failed to consider mitigating impacts by using a shared access and the possibility of using the

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<sup>92</sup> DW4

<sup>93</sup> DW3

<sup>94</sup> DW1

<sup>95</sup> See 3<sup>rd</sup> page 2<sup>nd</sup> paragraph

<sup>96</sup> DW1 Annex 1 paragraphs 16 and 17

Carnedd Wen access is mentioned<sup>97</sup>. However, this concern was raised against the background of its earlier unresolved objection to the use of the Carnedd Wen access, so whilst reference is made to consideration of use of the Carnedd Wen access there is no suggestion that this would be acceptable. The point apparently being made is that one access would have less impact than two accesses and this should be considered.

75. The position was made clearer by JC's evidence to the inquiry. He explained<sup>98</sup> that when he first considered these proposals and for a number of years thereafter the use of the Llanerfyl to Talerddig road through the Nant yr Eira valley appeared to be the "preferable option" but that this position changed after the change in the highway design team for the Llanbrynmair proposal when the road proposal was redesigned and it became apparent that there would be a larger land take than originally envisaged. At this point he suggested that the balance became "more the other way" so that the Llanerfyl to Talerddig road "was not the preferred access". The change in design team referred to occurred in January 2013<sup>99</sup>. In XX JC confirmed that if asked during 2012 (at the time when NRW (CCW) were consulted on the Llanbrynmair proposal and responded in the form of DW2) as to which route should be used to provide shared access for both Llanbrynmair and Carnedd Wen he would have said it was the Llanbrynmair proposals using the Llanerfyl to Talerddig road. He further confirmed that even at the point of his giving evidence it was still not clear whether the Carnedd Wen access would be acceptable to him.

76. At times there appears to be a suggestion by NRW/PCC that the proposed access works have been expanded beyond those previously envisaged. This appears to be based upon the argument that the red line boundary is now more extensive than originally envisaged. As already noted this is a misleading and unfair suggestion. As KM explained the red line boundary had been deliberately widely drawn at the request of PCC and NRW to allow discussions at the detailed design stage to consider appropriate details. This means that the red line includes more land than will be required; it does not

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<sup>97</sup> See DW2

<sup>98</sup> In X in chief

<sup>99</sup> See KM 1.1.5

indicate that the scope of the works has increased<sup>100</sup>. It most regrettable that the relevant bodies having sought this approach then seek to use it as justification for their change in position. The reference in the CCW letter of the 20<sup>th</sup> January 2010 (set out above) to “*substantial upgrades*” can be noted. It is clear that from the outset it was recognised that works of the nature proposed would be involved.

77. Although the possibility of a shared access was raised by NRW (CCW) in 2010, and despite the points raised by NRW (CCW) in its consultation response in respect of Llanbrynmair in 2012, PCC did not suggest that a shared access should be considered until late in the day in 2013. Furthermore whilst the revised access proposals were being discussed with PCC no suggestion was made to KM that there was some in principle difficulty or objection with the use of the Llanerfyl to Talerddig road and/or that consideration should be given to using the Carnedd Wen access instead. It is notable that there is no such suggestion in PCC’s outline statement of case<sup>101</sup> and that the earliest point which PCC can suggest that they raised this issue is the revised outline statement of case<sup>102</sup>.

78. It can be noted for example that on the 18<sup>th</sup> April 2013 PCC confirmed by e-mail that the overall strategy of bringing in the AILs from Llanerfyl and the general construction traffic from Talerddig was sensible. The e-mail confirms that “*There are clearly many aspects of your proposal that will need further attention but the general direction being taken appears to be sound*”. These observations were made with full consideration of the impacts of the proposals on the local area and residents, as the e-mail continues, “*I am however very concerned regarding the impact the highway works will themselves have on the local area and its residents. It was clear that you are also aware of these concerns and will be giving further consideration to mitigating the impacts*”<sup>103</sup>. It should be recalled that these proposals had been advanced in consultation with and input from PCC’s relevant landscape and planning representatives and also NRW. This was not looking at matters

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<sup>100</sup> KM rebuttal para 1.11 – RES-TRANS-REBUTTAL-MARTIN- SSA-B

<sup>101</sup> OBJ-002-OSOC

<sup>102</sup> OBJ-002-OSOC2

<sup>103</sup> RES-TRANS-POE-MARTIN-APP-SSA-B Appendix 1

simply from the perspective of technical highway requirements. It is plain from the e-mail that even at this stage PCC was accepting the strategy of using the county road for AIL access and was merely seeking mitigation.

79. NRW's and PCC's positions must be considered in the context that it was always apparent that works would have to be done to the local access road in order to make it suitable for use by AILs and construction traffic and that the scale of use by AILs and construction traffic would likewise be obvious. This was explicitly recognised in JC's response to the Carnedd Wen proposal on behalf of NRW (CCW) set out above which refers to "*substantial upgrades*" to the road. PR-V agreed in XX that all of this was obvious and that one would not have needed any detailed information from the applicant to establish this. He agreed that it would have been obvious to anybody with experience of wind farm development and that he and those who had previously been acting for PCC and NRW had such experience. He agreed that it would have been obvious that there would be a need to widen the road to provide the ability to manoeuvre AILs and to allow for vehicles to pass. He agreed that it would have been obvious that something needed to be done at Gosen Bridge and Dolwen Isaf bridge. He did claim that it would not have been obvious that there would have been a need to by-pass Neinthirion; this is a surprising claim and a momentary consideration of the position at Neinthirion reveals it as not credible; it is very clear that AILs could not manoeuvre between the existing buildings at Neinthirion. He agreed that it would have been obvious that there would have been tree loss and hedgerows would have to be removed. Indeed whilst the Cabinet report does claim that there is insufficient information on some of these aspects it is quite clearly recognised that there will be impacts of the order (indeed greater than) now being considered. For example the Cabinet report suggests that on one section alone of the road (section 1) there would be around 3km of mature mixed hedges removed and that around 60 mature trees as well as areas of woodland would be lost<sup>104</sup> – in fact that is a greater impact than would occur over all of the road.

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<sup>104</sup> RES Session 2 CD 4 p69

80. It can be noted at the outset that PCC's objections to the landscape impact of the highway works is limited to the works between Llanerfyl and site access 4 (i.e. sections 1 and 2 of the local road) as P R-V confirmed<sup>105</sup>. He agreed that the landscape and visual impacts of the highway works to the south of access 4 (i.e. section 3 of the local road) are acceptable<sup>106</sup>. He further confirmed that neither he nor PCC raised any issue with respect to any impacts upon residential amenity<sup>107</sup>.

81. The landscape proposals and mitigation works for all 3 sections of the local road have been the subject of extensive consultation with PCC and NRW as MvG explained<sup>108</sup>. PCC further accept that the design of the works on the minor road has done all that can be done to minimise the impacts of the works<sup>109</sup> and that the landscape and visual impacts have been minimised<sup>110</sup>. P R-V accepted that other than using a shared access with Carnedd Wen he was not suggesting that any more could be done to minimise the impact of the necessary works to gain access to the site.

82. P R-V explained in XX that his position was that the only alternative access to use of the minor road was access through the Carnedd Wen site. He also stated that if there were no alternative access to the site, the impact of the works to the minor road are such that the Llanbrynmair proposal should be refused. It can be noted that this is not something that he had stated in his proof. He also stated that access to the Llanbrynmair site should be through Carnedd Wen even if Carnedd Wen were not to receive consent, or were not to proceed, although again he had not made any such statements in his proof.

83. The position of P R-V and PCC on this issue is inconsistent and unreasonable:-

- i) It must be noted at the outset that P R-V's position (and that of PCC) that the use of the Carnedd Wen shared access is acceptable whereas use of the minor road is unacceptable is

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<sup>105</sup> P R-V XX and see para 7.6 of his proof

<sup>106</sup> P R-V XX

<sup>107</sup> P R-V XX

<sup>108</sup> RES-LAND-POE-GRIEKEN-S4 para 7.11

<sup>109</sup> OBJ-002-TRANS-POE-RUSSELL-SSA B para 3.54(f)

<sup>110</sup> P R-V XX

not based upon any assessment of the comparative impacts of the two route let alone any reasoned comparison of the two.

- ii) Furthermore it cannot be assumed that use of the Carnedd Wen route is inevitably better. It must be remembered that for a long period this was not the view expressed by CCW or JC who were advocating until recently that use of the minor road was preferable to use of the Carnedd Wen access.
- iii) P R-V and PCC appear to rely upon the contention that the Carnedd Wen access relies upon use of existing forestry tracks. However, this does not assist them. The forestry tracks will need extensive widening and this in places involves significant earthworks including cutting into the rock face. It is not self-evident that these works must involve less impact than the use, with some widening, of what is already a minor county road (of a significantly higher standard than the forestry track).
- iv) Remarkably in contrast to the detailed points taken with respect to the access road no assessment has been undertaken with respect to the Carnedd Wen access which has essentially just been accepted by PCC and P R-V.
- v) Whilst it is easy to state the proposition that one access will have less impact than two so that use of a shared access will have less impact than use of separate accesses that does not of itself establish (a) which of the accesses is the better to use as a shared access and (b) that use of either of the separate accesses is unacceptable.
- vi) The impacts of the Carnedd Wen access have been balanced against a number of benefits said to arise from the Carnedd Wen proposal including (a) extensive areas of habitat restoration, (b) landscape improvements arising from forestry clearance and (c) the renewable energy benefits associated

with the scheme. These are heavily relied upon by P R-V<sup>111</sup>. If the Carnedd Wen proposal were not to proceed none of these counter-balancing benefits would accrue. In the absence of those benefits it cannot be concluded that it would be better for Llanbrynmair to gain access through Carnedd Wen.

- vii) No consideration has been given to whether Llanbrynmair can achieve access through Carnedd Wen. This is something dependent upon agreement with RWE and the various landowners, which has not to date been forthcoming. It is also dependent upon questions of viability which have not been considered by PCC or P R-V.

84. PCC and P-RV now take the position that even though the Llanbrynmair site can satisfactorily accommodate 30 wind turbines retaining the minor road in its current condition is so important that this should prevent the provision of up to 100MW of renewable energy in an area previously identified for such development<sup>112</sup>. This is a remarkable position given the absence of any objection to the landscape and visual impact of the road proposals until recently and the absence of any suggestion that there was an in principle objection to use of the minor road because of the inevitable landscape and visual impact arising from the use of the road. It is a conclusion which would require very careful and compelling justification and which would then need to be balanced against all of the other relevant issues.

85. In fact P R-V's position is not justified on his own evidence and methodology. The careful and compelling justification required for the extreme position taken by P R-V and PCC is simply not there.

86. P R-V's methodology is set out in his proof of evidence and was confirmed in XX –

- i) For an impact to have significant visual effects the receptor has to have at least high sensitivity and the magnitude of

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<sup>111</sup> See for example OBJ-002-LAND-POE-RUSSELL- para 5.3 and 5.11

<sup>112</sup> P R-V XX

change has to be dominant, prominent **and** conspicuous<sup>113</sup>  
(note the change has to have all three characteristics).

- ii) For a significant landscape effect to occur the special qualities or key characteristics of a particular landscape character have to be substantially altered<sup>114</sup>.
- iii) Even if there is a significant adverse landscape or visual effect this is not necessarily an unacceptable impact<sup>115</sup>.
- iv) To be unacceptable an impact, or more likely an accumulation of impacts, has to be so severe or so widespread on a highly valued receiving landscape or range of receptors as to diminish substantially that value<sup>116</sup>.
- v) The Powys Landscape Character Assessment identifies the special qualities of the area and provides an appropriate base against which to assess the landscape character effects of the application<sup>117</sup>.
- vi) There is a strong relationship between the Powys Landscape Character Assessment and LANDMAP<sup>118</sup>.
- vii) The LANDMAP Guidance Note explains that one should use LANDMAP to inform a thorough understanding<sup>119</sup>. This is important because LANDMAP involves a uniform assessment over the whole of Wales and is a published document which has not been produced for the purpose of a particular inquiry or to argue a particular case<sup>120</sup>.

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<sup>113</sup> OBJ-002-LAND-POE-RUSSELL- para 2.9

<sup>114</sup> OBJ-002-LAND-POE-RUSSELL- para 2.9

<sup>115</sup> OBJ-002-LAND-POE-RUSSELL- para 2.14

<sup>116</sup> OBJ-002-LAND-POE-RUSSELL- para 2.14

<sup>117</sup> OBJ-002-LAND-POE-RUSSELL- para 3.4

<sup>118</sup> OBJ-002-LAND-POE-RUSSELL- para 3.4

<sup>119</sup> CD CPL-LAN-008 p2

<sup>120</sup> P R-V XX

- viii) The LANDMAP Guidance Note further explains that LANDMAP describes inter alia the landscape qualities and characteristics and key landscape characteristics<sup>121</sup>.
- ix) According to P R-V the contrast between upland moor and forest on the one hand and the partially developed valleys is typical of central Wales and it is this which gives the landscape its particular and special character<sup>122</sup>.

87. Although P R-V accepted that the Powys Landscape Character Assessment and/or LANDMAP were the appropriate basis for any assessment of impacts and that they identified the special qualities and key characteristics of the area, he then proceeded to assess the proposal against a “*finer grain*” than either document<sup>123</sup>. This is done because he recognised that the highway works would have “*comparatively localised*” impacts within the valley itself rather than impacts upon either the Powys Landscape Character Assessment areas or LANDMAP areas<sup>124</sup>. A number of points follow from this –

- i) Importantly this recognises that any impacts which P R-V identifies are very localised.
- ii) Implicit in the reliance upon a more localised area is the recognition and acceptance that a significant impact cannot be demonstrated against either the Powys Landscape Character Assessment areas or the LANDMAP areas.
- iii) The reliance upon this more localised area does not conform with P R-V’s methodology.
- iv) The more localised area is an area identified by P R-V for the purposes of this inquiry after his and PCC’s objection had been determined, it is not a separate area identified in any published document. It follows the objection rather than being something that was used to inform an assessment prior

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<sup>121</sup> CD-CPL-LAN-008 pp 3/4

<sup>122</sup> OBJ-002-LAND-POE-RUSSELL- para 3.10

<sup>123</sup> OBJ-002-LAND-POE-RUSSELL- para 7.4 and XX

<sup>124</sup> OBJ-002-LAND-POE-RUSSELL- para 7.4 and XX

to the objection<sup>125</sup>. Effectively it is something made up to support P R-V's case.

- v) No work was done to identify this separate localised area, which is not identified or defined anywhere in any transparent manner<sup>126</sup>.
- vi) This localised area cannot be compared with any other areas as the work needed to enable that to be done has not been undertaken, nor can it be compared with any other analysis<sup>127</sup>.

88. The relevant elements of the Powys Landscape Character Assessment, so far as P R-V is concerned are set out in Appendix G together with his assessment of the impact of the proposals upon them. The relevant LANDMAP VSAA records are also set out in P R-V's Appendix G and in his assessment table within the Appendix he sets out those elements of the VSAA record which he considers it appropriate to assess the proposal against. These comprise extracts from the *Summary Description* and *Justification of overall evaluation* sections of the record. P R-V sets out his assessment of the impacts set against those elements of the LANDMAP record in this Appendix.

89. The assessment against the Powys Landscape Character Assessment considers 7 LCAs. All 7 areas sustain a degree of impact as a result of the wind farm, but only 1 of the 7 sustains any impact as a result of the works to the minor road. With respect to 5 of the 7 LCAs the impact from the wind farm is assessed as *slight and not significant*. The other two LCAs comprise the *Dyfnant Forest/Llanbrynmair Moors LCA* and the *Tregynon/Llanerfyl LCA*.

90. The *Dyfnant Forest LCA* is affected only by the wind farm. The assessment is that there would be a moderate-substantial and significant effect "*because about half of the LCA (south of the Banwy Valley) would become a wind farm landscape*".

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<sup>125</sup> P R-V XX

<sup>126</sup> P R-V XX

<sup>127</sup> P R-V XX

91. The assessment with respect to the *Tregynon/Llanerfyl LCA* reads –

*“The equally prominent characteristics of the wind farm would extend across the whole of the Nant yr Eira Valley part of the LCA. The scale and appearance of wind turbines on the horizon line above this LCA would be out of keeping with the small scale, traditional farmed and highly sensitive character. The local highway improvements would have a substantial impact on the rural character, small scale and unspoilt character of the Nant yr Eira Valley. The moderate-substantial impact of the turbines and substantial impact of the highway proposals would be significant to the wider LCA as a whole.”*

92. A number of points about this analysis are immediately apparent –

- i) The Nant yr Eira Valley forms a relatively small part of the LCA as a whole (see for example Figure 4.4 of the CSEI August 2013).
- ii) Any impacts are recognised as limited to the Nant yr Eira Valley. Accordingly any impacts are limited to a relatively small part of the LCA.
- iii) As any impacts are limited to a relatively small part of the LCA there is no rational basis for contending that they are significant to the wider LCA as a whole.
- iv) It is plainly inconsistent to accept the impacts on the adjoining *Dyfnant Forest LCA*, half of which is said to become a wind farm landscape, but conclude that the impact on the *Tregynon/Llanerfyl LCA* is unacceptable when only a relatively small part is affected.
- v) The position is even more illogical when it is noted that the impact of creating a wind farm landscape in half of the adjoining LCA is assessed as *moderate-substantial* whereas the impact of the highway proposals (affecting a small part of the LCA) is judged as *substantial*.

- vi) The position becomes even more extreme when it is noted that the *Tregynon/Llanerfyl LCA* is judged to sustain a *moderate-substantial* impact from the turbines in any event but this is again judged to be acceptable. It must also be accepted in this context that any impact of the turbines would extend over a much wider area than any impact of the local highway works.
- vii) The only reference to impact from the *local highway improvements* refers to impact on *the rural character, small scale and unspoilt character* of the valley.
- viii) Given P R-V's methodology one must therefore turn to see whether any of this involves a substantial alteration to identified special qualities or key characteristics of a particular landscape character.
- ix) The LCA extract in P R-V's Appendix says "*overall this large area is a well-defined example of a traditionally farmed landscape – generally settled, safe and relatively intimate, except for the broader sweep of the exposed valley of Cwm Nant-yr-Eira, south west of Llanerfyl running up towards the Llanbrynmair Moors.*" It can be noted that that assessment specifically refers to the valley and does not support the conclusion that the landscape is small scale in this location. Furthermore the area is generally settled which means of course that there are signs of development, including roads. There is no suggestion that the character of the highway plays any role in this assessment or that it is considered to be a special quality or key characteristic.
- x) The LCA assessment does not identify any of the elements identified by P R-V to be special qualities or key characteristics.

- xi) Finally, as discussed below P R-V's assessment proceeds on a grossly inflated view of what impacts would arise from the *local highway improvements*.

93. In summary when the matter is considered against the Powys Landscape Character Assessment the claimed impacts do not involve identified key characteristics or special qualities; any impacts arising from the highway works are exaggerated; any impacts arising from the highway works would be very localised and would only affect a small part of the Nant-yr-Eira valley which in turn only represents a small element of the LCA. There is no basis for concluding that the highway works would have a substantial or significant impact on the wider LCA as a whole. The conclusion that the highway works would have an unacceptable impact upon the LCA whereas the wind farm's impact upon the LCA and the adjoining LCA is acceptable is truly incredible.

94. Consideration of the assessment against the LANDMAP VSAs reveals a similar situation. The assessment considers 7 LANDMAP VSAs which are affected by the windfarm, but the *Llanerfyl Mosaic Farmlands* is the only VSA affected by the works to the road. The assessment is effectively identical to that set out for the Powys Landscape Character Assessment LCA. Again the impact of the *local highway improvements* is said to be on *the rural character, small scale and unspoilt character* of the valley. Given P R-V's methodology one must therefore turn to see whether any of this involves a substantial alteration to identified special qualities or key characteristics of a particular landscape character.

95. The relevant elements of the VSA relied upon by P R-V are –

*“Distinct area typical of the mid regions of Montgomeryshire of small scale irregular field patterns with very strongly defined field boundaries typified by overgrown and managed hedgerows with a significant proportion of mature hedgerow trees...A succession of low rolling hills with gently sloping sides and rounded tops underlying a very traditional farming landscape – high aesthetic qualities, settled, domestic setting.*

*Well defined example of a traditionally farmed landscape, small scale field patterns with a diverse vegetation cover of hedgerow trees, mixed broadleaf woodland parcels. High aesthetic qualities and limited intrusion by modern development.”*

96. Again there is no suggestion that the character of the highway plays any role in this assessment or that it is considered to be a special quality or key characteristic. The area has a settled domestic setting which means of course that there are signs of development, including roads. It is plain from the description that the important elements of the VSAA are (i) the small scale irregular field patterns, (ii) strongly defined field boundaries, (iii) succession of rolling hills and (iv) traditional farming landscape. There is no suggestion that the *local highway improvements* would impact upon any of these special qualities or key characteristics.
97. Indeed it is important to keep some perspective on this issue. The Llanerfyl to Talerddig road is by no means the only highway running through this VSAA. For example the A458 runs through parts of it. There is no suggestion that this is a detracting factor through the area even though it is a much more significant structure and would have more impact than the proposed works in this case. Indeed the access road only runs through a small section of the VSAA and has limited impact within the section through which it runs.
98. It is furthermore important to consider the overall description given of the VSAA. It is described as “*typical of the mid regions of Montgomeryshire*” – i.e. it is not particularly special, it is an extensive area<sup>128</sup>. It is a “*very traditional farming landscape*” with a “*settled domestic setting*” – i.e. it is very much a man made landscape with development within it<sup>129</sup>. It is a working landscape with farming characteristic<sup>130</sup>. “*More modern development is common...usually practical*” – i.e. modern utilitarian development is common in the area<sup>131</sup>. The Nant yr Eira valley is *settled*, it is

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<sup>128</sup> P R-V XX

<sup>129</sup> P R-V XX

<sup>130</sup> P R-V XX

<sup>131</sup> P R-V XX

clearly not considered to be wild and it has been subject to evolutionary landscape change as road and access requirements have changed<sup>132</sup>.

99. The VSAA record contains guidelines. This seeks to control new development in farms with phased replanting of hedgerows, but there is no suggestion of any restrictions upon road works. The reference to the replanting of hedgerows is recognition that without management the attractive qualities of this landscape will not be maintained. The objectives encourage further use of traditional land management techniques, with hedge laying/coppicing, enriching and strengthening of field boundaries (including the replanting of hedgerows) and ensuring that development is carefully integrated into existing landscape character<sup>133</sup>. It is accepted that the highway works could be done in a way that is consistent with this<sup>134</sup>. The guidelines and objectives clearly accept further development in the area.

100. In summary when the matter is considered against the LANDMAP VSAA the claimed impacts do not involve identified key characteristics or special qualities; any impacts arising from the highway works are exaggerated; any impacts arising from the highway works would be very localised and would only affect a small part of the Nant-yr-Eira valley which in turn only represents a small element of the VSAA. There is no basis for concluding that the highway works would have a substantial or significant impact on the wider VSAA as a whole. The conclusion that the highway works would have an unacceptable impact upon the VSAA whereas the wind farm's impacts upon the VSAA are acceptable makes no sense.

101. If one turns finally to P R-V's own assessment of the area. It is agreed that the proposal would have no impact upon what he identifies as giving this landscape its particular and special character in paragraph 3.10 of his proof<sup>135</sup>. In paragraphs 7.4 and 7.5 he identifies what he considers to be the characteristics of the particular stretch of the valley upon which he concentrates. Again it can be noted that there is very limited mention of the minor road. In what he terms the upper valley, it is the watercourse, the

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<sup>132</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.12

<sup>133</sup> RES-LAND-POE-GRIEKEN para 7.6

<sup>134</sup> P R-V XX

<sup>135</sup> P R-V XX

grazing of the floodplain and the absence of field enclosures which are identified as contributing to local character. The proposals are agreed not to impact upon any of these features<sup>136</sup>. In the other part of the valley it is said –

- i) The watercourse is more deeply set and secretive – this is unaffected by the proposal.
- ii) Fields are hedged with many hedgerow trees and copses – this is unaffected by the proposal
- iii) The narrow lane undulates and turns between the hedged fields – the lane will continue to undulate and turn between hedged fields; whilst there is very limited and localised widening it must be remembered that in most locations there is no requirement to widen the lane i.e. that the lane already has similar widths to those proposed.
- iv) Views out are infrequent – this is unaffected by the proposal.
- v) The valley shares common characteristics with the Banwy Valley, is small scale and of high aesthetic quality – this is an interesting comparison. The Banwy Valley is the route which P R-V and PCC seek to direct the development to use and yet it is said to share common characteristics with this area and to be small scale and of high aesthetic quality. It can be noted that the Banwy Valley is said to have these qualities even though a trunk road runs through it which involves a much more considerable structure than would result from this proposal.

102. It is notable that even when P R-V selects a particularly compact area against which to judge the road proposals, which is essentially limited to the immediate area of the road, he still does not identify key characteristics or special qualities which are significantly affected by the proposed *local highway improvements*.

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<sup>136</sup> P R-V XX

103. P R-V's assessment of the impact of the *local highway improvements* in any event exaggerates the works involved and fails to take into account the mitigation and improvement provided.
104. P R-V suggests that the most notable loss would be the impact to the verges<sup>137</sup>. As MvG explained 92.6% of the highway widening is achieved through the use of grass reinforcement which will appear as grass verges<sup>138</sup>. P R-V acknowledges that they will be “*essentially ‘green’*” but argues that “*the earthworks required and engineering involved, cutting into the adjoining banks or building up adjoining lengths, would mean that the character of the current lane would inevitably be substantially altered and over a very considerable distance.*” He further claims that the appearance would be altered from a “*narrow country lane*” to “*a widened ‘engineered’ corridor*”<sup>139</sup>.
105. The lack of objectivity in his assessment is shown by his contrasting of the *country lane* with an *engineered corridor*. The current highway is of course just as much an *engineered corridor* as the improved road would be. As MvG explains, and supports by analysis, the improvements would not “radically” alter the road; the lane is a man-made structure, albeit well “bedded” into the existing landscape. The *cutting into adjoining banks* and *building up adjoining lengths* that P R-V refers to will occur in areas that are already *cut-in* or *built up* so the existing bank will often just be moved further back to accommodate the widening, and similar profiles will be replicated<sup>140</sup>. In so far as P R-V refers to enclosing features being pushed back, means of enclosure can be provided if this is thought to be beneficial<sup>141</sup>.
106. P R-V claims that it will take replacement planting 20 years to achieve adequate maturity<sup>142</sup>. Again as MvG points out this ignores the fact that the majority of the replacement vegetation will be hedgerow which would establish within 5 years<sup>143</sup>.

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<sup>137</sup> OBJ-002-LAND-POE-RUSSELL- para 7.8

<sup>138</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.4

<sup>139</sup> OBJ-002-LAND-POE-RUSSELL- para 7.8

<sup>140</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.6

<sup>141</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.6

<sup>142</sup> OBJ-002-LAND-POE-RUSSELL- para 7.8

<sup>143</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.7

107. P R-V's assessment of the impact of localised widening on the verges is exaggerated and lacks balance. However, even were it to be accepted as the correct measure of the impact of the proposal it must be acknowledged that this is a very localised impact which is limited to the immediate vicinity of the existing road which is in any event an engineered structure which will inevitably be subject to change over time. In this respect the impact is clearly much more limited than any impact arising from the wind turbines (which of course is considered to be acceptable). The impact cannot sensibly be said to be significant for the valley as a whole (or even the area chosen by P R-V) still less for either the VSAA or LCA.
108. In addition to the impact upon verges P R-V identifies four locations where he claims substantial landscape harm would occur.
109. The first is the Neinthirion Bypass where he claims that the creation of an off-line reinforced grass access track to bypass the hamlet of Neinthirion would have short to medium term landscape and visual impacts which would be substantial and significant for the Nant yr Eira valley as a whole<sup>144</sup>. Pausing there it can be noted that this does not amount to impacts upon either the VSAA or LCA as a whole and again this appears to have been ignored by P R-V where he simply conflates localised impacts into much wider impacts. It is also contradicted 6 paragraphs earlier where he states that as a result of *"the comparatively localised nature of the effects of the highway scheme on the valley"* he felt it necessary to look at a more localised area<sup>145</sup>
110. MvG explains that there would be localised significant effects on landscape character and views within the vicinity of the proposed works, but that they would not be experienced across the whole Nant yr Eira valley. The earthworks would be feathered into the existing landform and the line of trees in the area between Glyndwr's Way and the track strengthened to help filter views from the National Trail. The off-line track would be constructed as grass reinforcement, using local grass seed to fit appropriately into the surrounding landscape. MvG's experience is that this would be achieved over

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<sup>144</sup> OBJ-002-LAND-POE-RUSSELL- para 7.9

<sup>145</sup> OBJ-002-LAND-POE-RUSSELL- para 7.3

a maximum of two growing seasons. The effects will be short lived and localised<sup>146</sup>.

111. P R-V identifies *locally significant* landscape and visual impacts at Dolwen Isaf Bridge<sup>147</sup>. This categorisation of the impacts can be contrasted with the approach taken to Neinthirion and Gosen Bridge and is an acknowledgment that the impacts would be very localised. It cannot found an objection to the proposal. MvG agrees that there would be locally significant impacts but he explains that the existing bridge is a wide modern concrete structure (recognised by P R-V as “*not a particularly valuable landscape feature*”<sup>148</sup>). The widening of the road south of the bridge will require the removal of an area of coniferous forestry plantation which is currently in poor condition. This was acknowledged by NRW and JC welcomed the removal of this plantation<sup>149</sup>. The area of grass reinforcement for the overrun and offline works located within the field to the north of the bridge would establish over a maximum of two growing seasons. Accordingly not only would the impacts be localised, they would also be short lived<sup>150</sup>.

112. The third location identified is the 350 metre diversion in the vicinity of Gosen which provides a bypass to an unsuitable section of existing vertical alignment. This would have minimal impacts which appears to be recognised by P R-V as he categorises this as “*locally significant*” landscape and visual impacts<sup>151</sup>. Again such localised impacts cannot be suggested to render the proposal unacceptable.

113. The final location is Gosen Bridge. P R-V’s assessment of what would occur at this location proceeds on a mistaken view as to what is proposed. He believed that there would be more tree loss than is necessary to provide for tracks for working. KM explained that an existing track which can be seen on site would be used. P R-V concludes that the bridge is “*important and valuable to the Nant yr Eira valley as a whole*” and that the “*charming appearance of the twisting narrow approach and traditional bridge...would*

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<sup>146</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.8

<sup>147</sup> OBJ-002-LAND-POE-RUSSELL- para 7.10

<sup>148</sup> OBJ-002-LAND-POE-RUSSELL- para 7.10

<sup>149</sup> JC XX

<sup>150</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.9

<sup>151</sup> OBJ-002-LAND-POE-RUSSELL- para 7.11

*become an engineering feature of A-road proportions and character*". He argues that the *"impact of this aspect of the road improvements would be significant on the character of the Nant yr Eira valley and wholly unacceptable"*<sup>152</sup>. It can be noted that this is the only 1 of the 4 locations where he alleges the impact to be *wholly unacceptable*.

114. P R-V's assessment of the impact is plainly exaggerated. The existing bridge is not listed and the crash barriers are a particularly noticeable feature which must be considered to detract from the bridge. Whether or not one concludes that it is a charming feature, P R-V agreed<sup>153</sup> that its visual contribution is localised, confined to an area of approximately 200 metres along the road and from the public footpath to the north-west of the bridge. Whilst the works will have a localised major effect there are significant landscape reinstatement works and the works will not be seen as an engineering feature. As MvG explained proportions of different road classifications do not follow standard set parameters. In this case the avoidance of kerbs, use of grass reinforcement for over-runs, the use of local stone for cladding of the parapet and other structures, and the reinstatement and addition of trees and hedgerows, as outlined in the proposed mitigation in the CSEI<sup>154</sup> will retain the rural character of the road<sup>155</sup>. P R-V confirmed that the bridge design is appropriate<sup>156</sup>. Whilst the road will be changed as a result of the proposals, as MvG explained the road will retain a rural appearance and will not have an A-road appearance when compared to the nearby A458 and A470. It is also important to note that east of the bridge the widening comprises mainly grass reinforcement<sup>157</sup>.

115. Turning to the issue of visual impacts. It can be recalled that for an impact to have significant impacts the receptor must have at least high sensitivity and the magnitude of change has to be dominant, prominent and conspicuous.

116. The changes cannot sensibly be described as dominant, prominent and conspicuous. They are very localised, confined to the immediate vicinity of

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<sup>152</sup> OBJ-002-LAND-POE-RUSSELL- para 7.12

<sup>153</sup> P R-V XX and see RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.10

<sup>154</sup> CD-RES-BAC-009

<sup>155</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.11

<sup>156</sup> P R-V XX and see OBJ-002-LAND-POE-RUSSELL- para 7.12

<sup>157</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.11

the road. They occur in the context of the existing road, which is an engineered structure in its own right and subject to change over time. In most instances they simply replicate the profiles already there.

117. As the change cannot be described as dominant, prominent and conspicuous the visual impacts would not be significant using P R-V's own methodology.

118. Turning to the question of the receptors. These are essentially limited to users of the road which is mainly a small number of local residents and those delivering to them. The majority of receptors will be drivers who are recognised as of medium sensitivity<sup>158</sup> and accordingly any impact upon them would not give rise to a significant impact. In so far as any reliance is placed upon local residents it is important to recall that no issue is taken with impacts upon residential amenity and any residential views would be extremely limited.

119. Essentially P R-V relied upon walkers as the sensitive receptors, but he was unable to give any indication of the number who might be affected.

120. Any visual impacts arising from the road works will be localised and seen in the context of the existing road and the improvement for use of the road which they provide. In practical terms any visual impacts of the road works must be more limited than the visual impacts arising from the wind farm development itself. It is again remarkable that the visual impacts of the road works should be suggested to be greater than those of the wind farm which are in turn considered to be acceptable.

121. It is important in considering this matter to give proper weight to the improvements and benefits arising from the proposal. There will be a net gain in the total length of hedgerow and a greater number of individual trees will be planted than those lost. Furthermore, the replacement and additional hedgerows will be more species diverse and subject to a maintenance and management plan to ensure that they are retained in better condition than the existing hedgerows. The existing hedgerows tend to be maintained by PCC by flailing to open up sight lines along the road, but as a result of the road

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<sup>158</sup> P R-V XX

improvements they can be left to grow larger potentially resulting in greater contribution to landscape character than the existing hedgerows<sup>159</sup>. Whilst P R-V does not contest any of these benefits he merely argues that the short term loss (which he exaggerates) would outweigh the longer term mitigation<sup>160</sup>. This is a surprising approach which appears to betray a desire to resist the proposal come what may.

122. When the matter is considered overall it is clear that the highway works will not significantly alter the experience of the Nant yr Eira valley. Still less can any impact upon the valley then be conflated into an impact upon the VSAA or LCA as P R-V seeks to do. It is relevant and important to note that there are many VSAAAs that contain minor and major roads of greater significance and which are still considered to retain their “outstanding” scenic quality<sup>161</sup>.

123. Furthermore the impacts arising from the *local highway improvements* would be experienced in the context of the wind farm development. In practical terms the landscape and visual impact of the wind farm development will be much more significant than the very localised impacts of the *local highway improvements*. It is simply not credible to argue that impacts of the wind farm are acceptable but that those of the *local highway improvements* are unacceptable.

124. JC’s position on this matter was ultimately revealing. Essentially he was concerned that it would be preferable to have one shared access rather than two separate accesses. This is not the appropriate test and it does not provide a proper basis for resisting this much needed development. Similarly his view as to which of the two access routes was “preferable” changed over time. The matter it would appear has always been one of preference rather than any fundamental or in principle objection. A preference for something else is not a basis for resisting a proposal.

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<sup>159</sup> OBJ-002-LAND-POE-RUSSELL- para 7.8

<sup>160</sup> OBJ-002-LAND-POE-RUSSELL- para 7.8

<sup>161</sup> RES-LAND-REBUTTAL-GRIEKEN-SSA B para 1.13

Cumulative/combined landscape and visual impact

125. In the case of both Llanbrynmair and Carnedd Wen the greatest potential for cumulative landscape and visual impact arises from the addition of the other proposal given their relative proximity. The only point taken with respect to cumulative impact arising from these two proposals was the NRW concern with respect to cumulative impact upon the National Park which is addressed above. For the reasons considered above this does not provide a ground for resisting the Llanbrynmair proposal.
126. Given the scale of development envisaged for SSA B in TAN 8 a significant cumulative landscape and visual impact is inevitable if the policy is to be fulfilled<sup>162</sup>.
127. The contribution which Llanbrynmair might make to the inevitable landscape and visual impact within SSA B was assessed under three different scenarios<sup>163</sup>. Consideration of those various scenarios confirms that Llanbrynmair would not give rise to unacceptable cumulative landscape or visual impacts and that the identified effects are acceptable from a landscape and visual perspective in terms of both national and local policy<sup>164</sup>.
128. The proposed turbines of the wind farms within SSA B and SSA C are separated by a minimum distance of 20km. At that distance there is no potential for significant cumulative interaction between SSA B and SSA C<sup>165</sup>.
129. The ZTV analysis indicates that combined or successive visibility of the proposed wind farms in SSA B and SSA C is limited<sup>166</sup>. Areas where intervisibility is possible between SSA B and SSA C are generally limited to small areas on higher ground between SSA B and SSA C, focussed across two bands of elevated upland hills and plateau. Visibility within valleys that lie between SSA B and SSA C is generally limited to either schemes within

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<sup>162</sup> RES-LAND-POE-GRIEKEN-S4 para 8.2

<sup>163</sup> RES-LAND-POE-GRIEKEN-S4 paras 7.5 – 7.7 for landscape and 7.8 – 7.10 for visual

<sup>164</sup> RES-LAND-POE-GRIEKEN-S4 para 8.4

<sup>165</sup> RES-LAND-POE-GRIEKEN-S4 para 7.2

<sup>166</sup> RES-LAND-POE-GRIEKEN-S4 para 7.12

SSA B or SSA C<sup>167</sup>. The introduction of Llanbrynmair to a baseline of SSA B wind farm developments introduces only limited additional theoretical visibility of wind farm development<sup>168</sup>.

130. Eight conjoined cumulative viewpoints were agreed with PCC to illustrate the theoretical combined and successive visibility of wind farm development located within the two SSAs. Analysis of the impact from the various viewpoints reveals that the addition of Llanbrynmair has either a negligible or minor impact in all cases<sup>169</sup>.

131. Consideration has also been given to the cumulative sequential effect on various routes which were agreed with PCC<sup>170</sup>. In each case the addition of Llanbrynmair would result in no more than a negligible cumulative impact<sup>171</sup>.

132. In addition to the cumulative impacts arising from the combination of Llanbrynmair with other wind farm proposals in SSA B and SSA C consideration has also been given to the impact of the strategic highway works and the necessary grid connections.

133. The landscape and visual impacts of the route provided in the sTMP are assessed in the ES for the sTMP which concludes that no significant landscape and visual effects, including cumulative effects, are identified as a result of the works set out in the sTMP for the proposed transport of component parts from Ellesmere Port<sup>172</sup>. Given that the sTMP proposes comparatively minor works to what are already trunk roads this conclusion is to be expected.

134. The grid connection for Llanbrynmair is not something to be determined by this inquiry. There are a number of different potential connection options and the particular method and alignment is a matter ultimately for SP Manweb the local Distribution Network Operator (DNO) and/or National Grid. The potential for connection to the grid is a separate matter identified

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<sup>167</sup> RES-LAND-POE-GRIEKEN-S4 para 7.13

<sup>168</sup> RES-LAND-POE-GRIEKEN-S4 para 7.15

<sup>169</sup> RES-LAND-POE-GRIEKEN-S4 paras 7.16 – 7.39

<sup>170</sup> RES-LAND-POE-GRIEKEN-S4 para 7.41

<sup>171</sup> RES-LAND-POE-GRIEKEN-S4 paras 7.42 – 7.50

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by the S of S<sup>173</sup>. The final method and alignment selected by the DNO may be affected by what if any combination of proposals receives consent, but the DNO has quite properly explained to the inquiry that there are other considerations (not before this inquiry) which influence how the network should be designed and which will necessarily influence the DNO's final selection<sup>174</sup>. It is furthermore important to keep in mind that whatever the ultimate route and method is selected that will be subject to a detailed consent process and a full EIA which will consider the landscape and visual impacts carefully<sup>175</sup>.

135. Given that state of affairs any assessment of the landscape and visual impact of the likely grid connection can necessarily only be undertaken at a high-level and the real issue for consideration is whether there are any grounds for concluding that any landscape and visual impacts must necessarily be unacceptable.

136. The information currently available provides sufficient information to enable a judgment to be made on the overall acceptability of the combined or total cumulative landscape and visual effects from the five wind farm proposals and their likely grid connections<sup>176</sup>.

137. At present the most likely grid connection proposal for Llanbrynmair would involve connection to a National Grid "hub" substation at Cefn Coch via a 132kV HDWP OHL and a short section of 132 kV steel tower OHL<sup>177</sup>. This would lead to a significant landscape character change to a localised area at the northern end of the Cambrian Mountains RCA as a result of the change to the sense of naturalness<sup>178</sup>. The proposed grid connection would cross several LCAs and there would be significant landscape effects along the final route of the grid infrastructure and the immediate surrounding area up to

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<sup>173</sup> Matter 14

<sup>174</sup> See SPM/028 – Response to Statements of Case Session 4

<sup>175</sup> RES-LAND-POE-GRIEKEN-S4 para 6.31

<sup>176</sup> RES-LAND-POE-GRIEKEN-S4 para 6.9

<sup>177</sup> RES-LAND-POE-GRIEKEN-S4 para 6.13

<sup>178</sup> RES-LAND-POE-GRIEKEN-S4 para 6.16

approximately 1 km<sup>179</sup>. There would be no additional landscape effects on the National Park or the North Ceredigion Upland Special Landscape Area<sup>180</sup>.

138. Significant visual effects are not likely to extend beyond 1km from the HDWP OHL or 2.5km from the steel tower OHL<sup>181</sup>. Views in the vicinity of the Llanbrynmair wind farm would be in the context of the wind farm which would be the key feature in these views. Further afield the route would be back clothed by forestry and where crossing the open moorland plateau the wood pole would be a minor element in the open landscape. Where the poles become steel towers visibility would extend over a wider area but would be in the context of the substation and Tirgwynt<sup>182</sup>. Given the distance between SSA B and SSA C the associated grid infrastructure with the different wind farms would not give rise to additional significant cumulative effects<sup>183</sup>.

139. The evidence demonstrates that a grid connection between Llanbrynmair and Cefn Coch can be accommodated without unacceptable landscape and visual effects with or without Carnedd Wen<sup>184</sup>.

140. PCC is opposed to any 400kV line as proposed by National Grid but it accepts that both Llanbrynmair and Carnedd Wen can be connected to the network without unacceptable landscape and visual impacts.

141. In summary there are no cumulative landscape and visual impacts which would provide any basis for resisting the Llanbrynmair proposal.

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<sup>179</sup> RES-LAND-POE-GRIEKEN-S4 paras 6.17 – 6.18

<sup>180</sup> RES-LAND-POE-GRIEKEN-S4 para 6.20

<sup>181</sup> RES-LAND-POE-GRIEKEN-S4 para 6.21

<sup>182</sup> RES-LAND-POE-GRIEKEN-S4 para 6.23

<sup>183</sup> RES-LAND-POE-GRIEKEN-S4 para 6.28

<sup>184</sup> RES-LAND-POE-GRIEKEN-S4 para 6.29

## Highway and transportation issues – matter 5

### The strategic route

142. The proposal will involve bringing substantial construction traffic into a relatively remote rural area and this has inevitably required careful consideration of the highway implications of the proposal. The identification of the various SSAs inevitably requires access to these areas for construction of the various wind farms required to meet the policy objectives and the fact that in practice a number of proposals will be required to meet these policy objectives further complicates consideration of the highway issues. The highway issues essentially revolve around consideration of the AIL traffic and the general increase in traffic arising out of the construction traffic for the proposals.
143. In accordance with the guidance in NPS EN-3 paragraph 2.7.82 the wind farm industry has responded positively and constructively towards ensuring that the delivery of the large components which will entail AIL traffic can be managed in a co-ordinated way and has produced a strategic Traffic Management Plan (sTMP) for access to SSA B and SSA C<sup>185</sup>. The purpose of the sTMP is to establish a protocol, with associated physical works, to prevent and limit the occurrence of potential traffic and transport effects.
144. The turbine component parts will be delivered to Ellesmere Port which is the nearest suitable UK port for access to SSA B and SSA C and which has excellent links to the M53<sup>186</sup>. Use of Ellesmere Port as the preferred port of entry complies with the Highway Agency's Water Preferred Policy which requires abnormal loads to be delivered to the port nearest the destination in

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<sup>185</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 2.3

<sup>186</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 2.12

order to minimise road mileage making sure the most appropriate road is used<sup>187</sup>.

145. From the M53 the delivery traffic is able to use the trunk road network. The purpose of the trunk road network is to carry major loads over greater distances and it is constructed to higher standards compared to the county road network<sup>188</sup>.

146. The common route for both SSAs extends to Welshpool. The AIL traffic for SSA B then travels through Welshpool on the B4381 before taking the A458 to the vicinity of the site<sup>189</sup>. The use of the B4381 through Welshpool is appropriate as use of the trunk road would require a right turn at the constrained crossroads from Salop Road onto High Street. Furthermore use of the B4381 reduces the distance that convoys travel through the built up area of Welshpool<sup>190</sup>.

147. The abnormal loads will travel in convoys of two abnormal load vehicles of up to 50m long or 4.5m wide, although there is a possibility of convoys of three vehicles if the delivery system is found to work well and this is found to be suitable<sup>191</sup>.

148. The aim of the traffic management strategy is to limit the delay to the travelling public to a maximum of 10 minutes. North of Oswestry the trunk road network comprises a mix of dual-carriageway and wide high standard single-carriageway roads. South of Oswestry the reduced carriageway width means that there is scope for conflict with oncoming vehicles. South of Oswestry, police motorcyclists will travel ahead of the convoys and hold oncoming traffic wherever the carriageway is wide enough to allow the convoys to pass. A back up network of designated passing places will enable convoys to move from passing place to passing place, waiting at each to allow traffic to clear if required. Each passing place will be large enough to

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<sup>187</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 2.14

<sup>188</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 2.15

<sup>189</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – paras 2.12 & 2.13

<sup>190</sup> sTMP Section 1 para 3.2.3

<sup>191</sup> sTMP Section 1 paras 5.1& 5.2.3

hold a single convoy and key passing places will be designated as suitable for longer term storage in the event of an emergency<sup>192</sup>. The time taken for the convoys to move between passing places has been calculated assuming an average speed of 30mph on A-class roads and 20mph on minor roads with the exception of specific constraints<sup>193</sup>.

149. Convoys will travel during hours of daylight for safety reasons. Convoys are planned to move through Welshpool between the morning and lunchtime peaks on a weekday with no more than one convoy per day moving through Welshpool between 7am and 7pm on a weekday. Convoys may also be moved through Welshpool before 7am or after 7pm and at weekends<sup>194</sup>.

150. Movement of the AILs through Welshpool will involve some very short term traffic management within Welshpool. With the possible exception of 3 parking places to the north of the town centre there is no issue with respect to on-street parking but it will be necessary for any vehicles in non-designated parking places to be moved on by the police for the short period during which the convoy passes through. In addition there is insufficient carriageway width for traffic to pass the convoy on the A458 Raven Street approaching the A490 roundabout which means that for the short period during which the convoy passes through traffic will be diverted down the parallel B4381 Brook Street; this adds an additional 50 metres to any journey<sup>195</sup>. It is important to keep in mind that Brook Street will be available at all times for traffic to pass through the town so that there is always an alternative route for any traffic wishing to avoid the convoy.

151. The distance between the last passing place before Welshpool (located on the A483)<sup>196</sup> to the passing place at the Raven roundabout (i.e. on the other side of Welshpool town centre<sup>197</sup>) is some 3.1 km and the time taken to pass between the two passing places is calculated at 9 minutes<sup>198</sup>. It is important to note that a considerable length of this section of road is outside Welshpool;

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<sup>192</sup> sTMP Section 1 para 6.1

<sup>193</sup> sTMP Section 1 para 6.2.2

<sup>194</sup> sTMP Section 1 para 7.1

<sup>195</sup> sTMP Section 3 para 3.2.2

<sup>196</sup> Passing place 2-3g see sTMP Section 3 Figure 3-3b

<sup>197</sup> Passing place 3-3b see sTMP Section 3 Figure 3-3b

<sup>198</sup> sTMP Section 3 Table 3-3

the actual distance traversed through Welshpool is only 0.8km and even if it were assumed that the convoy would only average 10mph through the town centre (which is a conservative assumption) this would only take 5 minutes to pass through the town<sup>199</sup>. Taking into account the need for the police to prepare the way for the convoy to pass through the town centre the total time during which the convoy might be said to be having an impact upon the town centre would be of the order of 10 minutes<sup>200</sup>.

152. A public awareness campaign will be undertaken to ensure that local communities understand the nature and timing of the turbine component deliveries into Mid Wales and that the travelling public is informed of the implications of the movements on their journeys<sup>201</sup>. Given that development of the scale provided for in policy will involve a significant number of AIL deliveries it is likely that the public will become well aware of the likely timings of convoys and their impacts and if necessary will adjust travel arrangements to accommodate this.

153. The sTMP has been the subject of widespread consultation with the relevant public bodies and it has been approved by the highway authority. In addition an Agreed Statement has been produced in consultation with the various public bodies addressing the delivery process to ensure that the process satisfactorily addresses the needs of the developers and the public bodies<sup>202</sup>.

154. An assessment of the cumulative impact of non-AIL construction traffic associated with proposed Mid Wales wind farm schemes has been undertaken using a Cumulative Traffic Impact Model and the Institute of Environmental Assessment (IEA) guidelines for the Environmental Assessment of Road Traffic<sup>203</sup>. In addition to the five proposals before this inquiry that assessment has included the impact of 9 other schemes<sup>204</sup>. Some criticism has been raised

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<sup>199</sup> KM and SA – hearing session 18<sup>th</sup> March 2014

<sup>200</sup> KM and SA – hearing session 18<sup>th</sup> March 2014

<sup>201</sup> sTMP Section 1 para 8.1

<sup>202</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – paras 3.1 – 3.15

<sup>203</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 4.1

<sup>204</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 4.3

that there may be other proposals at some time in the future. The cumulative assessment has taken into account all schemes which are currently in the planning process and for which there is accordingly sufficient information to make an accurate assessment; it is neither appropriate nor necessary to consider other schemes which for example have not passed beyond scoping.

155. The model is inter-active allowing the impact of any number of wind farms, including individual developments, to be assessed in terms of strategic road network traffic impact, and allowing assessment of different scenarios<sup>205</sup>.

156. The IEA Guidelines suggest screening criteria in terms of percentage changes in traffic to establish the need for an assessment of potential significance. The IEA advises that a 30% change in traffic flows represents a reasonable threshold for including a highway link in an assessment of potential significance<sup>206</sup>. It is important to appreciate that this is a threshold for further investigation. It is not suggested that a 30% increase in traffic will result in a significant effect, merely that below this threshold it can confidently be expected that there will not be a significant impact and therefore there is no need for further investigation. It is also important to note that some environmental impacts are more sensitive to traffic changes than others and the 30% threshold has been set on the basis of the most sensitive factors<sup>207</sup>. It is furthermore important to keep this threshold distinct from other figures which address matters such as road capacity. There is no issue with respect to the capacity of the road to accommodate the levels of traffic proposed<sup>208</sup>.

157. The cumulative impact assessment on non-AIL construction traffic reveals that the daily cumulative impact of the wind farm proposals does not exceed the threshold identified in the IEA Guidelines and there are no grounds for

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<sup>205</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – paras 4.6 & 4.17

<sup>206</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 4.7

<sup>207</sup> KM – hearing session 18<sup>th</sup> March 2014

<sup>208</sup> KM, SA and DT – hearing session 18<sup>th</sup> March 2014

concern as to the impact of such traffic<sup>209</sup>. This assessment has effectively been undertaken on a “worst case” basis assuming that many of the proposals are developed at the same time thereby concentrating the impact. In reality it is likely that there will be a greater spread of development and therefore a lesser impact.

158. Delivery of the necessary turbine components will involve a significant number of AIL deliveries which will have a degree of impact upon the local communities. However, this must be put in context. Whilst the AIL convoys may cause an element of delay to road users any disruption and delay has been kept to a minimum with maximum delays of about 10 minutes. Furthermore whilst delivery by convoys will extend over a significant period of time, if all of the proposals are to proceed, there will only be one convoy a day, unless experience shows that a greater number of convoys is acceptable. There are no identified impacts associated with general construction traffic. Any wind energy development inevitably gives rise to the need for AIL deliveries and construction traffic. The identification of the various SSAs inevitably contemplates that there will be highway impacts and works of the nature proposed. The impacts have been kept to a minimum and there is nothing to suggest that such impacts are greater than might be expected or that they are in any way unacceptable. The evidence has established that the highway implications of the proposal have been satisfactorily addressed and accommodated.

#### *The local access*

159. At the outset it is important to note that the highway authority accepts that the local access proposals are appropriate in highway safety terms<sup>210</sup> and raises no issue with the technical highway details. Indeed in answer to the

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<sup>209</sup> Strategic Transport Hearing Statement – RES-RWE-CPL-VATT-TRANS STATEMENT S4 – para 4.12

<sup>210</sup> OBJ-002-TRANS-RUSSELL-SSA-B

Inspector's question MR confirmed that the proposals would result in a minor improvement to road safety over the existing. Given that this has been identified to be the most important consideration when the question was asked, MR's considered answer to the question is particularly significant.

160. The proposals have been subject to independent road safety audits which concluded that the access route strategy is suitable in road safety terms<sup>211</sup>. Both highway authorities have indicated that the audits are satisfactory<sup>212</sup>.

161. PCC has confirmed that the proposals are technically feasible (S of C para 5.1.2) and in highway terms a safe route can be provided<sup>213</sup>. MR confirmed in XX that there is no need to consider an alternative access for any technical highway reasons. He further confirmed in XX that –

- i) The conclusion that access by AILs using the county road is technically feasible is one that was carefully considered by Mr Williams (the relevant highway officer) and PCC before they accepted it.
- ii) That conclusion was reached on the basis of the AECOM drawings provided in June 2013 and now found in the CSEI.
- iii) There was no issue raised with whether the works could be carried out within the red line – that is an issue which was highly material to whether the works were technically feasible.
- iv) Similarly no issue was raised with whether the works could be carried out as proposed.
- v) The proposals were supported by a buildability note, and assessments by Colletts and Jones – none of these have ever been questioned – and there had been no request for further clarification.

162. It is clear that there is no highway objection to the proposals as such. The issue really is PCC's preference for a shared access using Carnedd Wen.

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<sup>211</sup> RES-TRANS-POE-MARTIN-SSA B paras 4.5.1 – 4.5.4 and LTMP Appendix G-1

<sup>212</sup> RES-TRANS-POE-MARTIN-SSA B para 4.5.4

<sup>213</sup> OBJ-002-TRANS-POE-RUSSELL-SSA-B para 3.34 and MR XX

163. The original highway proposals were based on access for AILs and construction traffic from the A458 at Llanerfyl to site entrance 4<sup>214</sup>. This approach was reconsidered when KM was instructed and it has led to the current proposals which involve all AILs entering from Llanerfyl but all construction traffic now entering and leaving the county road from the A470 at Talerddig. This diverts construction traffic away from the “more populated” and more environmentally sensitive section of the county road<sup>215</sup>. It also results in less work being required to the county road. As a consequence of the amended proposal the number of passing bays/overrun areas reduces from 99 to 67, with the number within the more constrained section 1 reduced from 73 to 40. In addition the surface treatment has moved from hard asphalt to grass reinforcement which will further minimise the impact of the proposals. The number of passing places for everyday traffic has increased from 2 to 6 which further reduces the impact on local traffic during AIL deliveries<sup>216</sup>. MR agreed with all of this in XX.

164. The Llanerfyl to Talerddig road is a minor route along the Nant yr Eira valley which links Llanerfyl on the A458 to the north with Talerddig on the A470 to the south. The road is 17.5km in length and is not subject to any speed restrictions<sup>217</sup>. Apart from Llanerfyl, there is limited development on either side of the road with the route mostly servicing small hamlets, forestry sites and agricultural industry. The road is currently used by agricultural traffic, forestry traffic and other vehicles servicing the premises along the road<sup>218</sup>

165. These proposals are the outcome of detailed discussions between KM on behalf of RES and PCC (both highways and landscape) and NRW as KM outlined in his evidence<sup>219</sup>. As KM explains at no time during these discussions did PCC suggest that access via the county road was unsuitable or that a shared access should be considered instead.

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<sup>214</sup> RES-TRANS-POE-MARTIN-SSA B para 4.1.1-4.1.4

<sup>215</sup> RES-TRANS-POE-MARTIN-SSA B para 4.2.1

<sup>216</sup> RES-TRANS-POE-MARTIN-SSA B para 4.2.9-4.2.10

<sup>217</sup> RES-TRANS-POE-MARTIN-SSA B para 2.6

<sup>218</sup> RES-TRANS-POE-MARTIN-SSA B para 2.8

<sup>219</sup> See RES-TRANS-POE-MARTIN-SSA B para 1.3.6 and RES-TRANS-REBUTTAL-MARTIN-SSA B paras 1.3 – 1.8

166. Consideration has been given to the possibility of using an alternative access. KM explained why the use of the A470 as an access route for AILs would not be appropriate<sup>220</sup>, and nobody has suggested use of this route. Use of the A458 for all traffic was previously proposed, but KM has explained why this is less appropriate than the current proposal<sup>221</sup>. There is no objection from the statutory bodies to the use of the southern section of the county road from the A470 for general construction traffic with the consequent improvements to this section of the road and no suggestion that it would be more appropriate to revert to the strategy of taking all traffic from the A458.
167. The possibility of using a shared access with Carnedd Wen was investigated at an early stage (2008/9) with a formal meeting to discuss it held on 2<sup>nd</sup> February 2009. In the light of the discussions it was concluded that a shared access for both projects was not a viable option for a number of reasons. These included problems associated with the logistical management of two different developments<sup>222</sup>.
168. Since then if anything it has become clearer that use of a shared access is not an achievable approach. Carnedd Wen is subject to a multi-year tree felling programme prior to commencement of the construction works, and construction of the necessary tracks is not programmed until later in the programme. Whilst RES has put forward proposals to RWE to try to allow Llanbrynmair to proceed as programmed no agreement has been forthcoming. As KM explained if Llanbrynmair were to be delayed to accommodate the programme for Carnedd Wen the proposal would not be viable. In addition even were Llanbrynmair to be developed the delivery of the renewable energy (planned in policy for 2010) would be delayed by many more years<sup>223</sup>.
169. Use of the county road for construction traffic and AIL deliveries will involve some physical works to the road.
170. The Talerddig A470 junction is to be improved to allow for two HGVs to use the junction simultaneously. Welsh Government, the highway authority

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<sup>220</sup> RES-TRANS-POE-MARTIN-SSA B paras 4.3.2-4.3.4

<sup>221</sup> RES-TRANS-POE-MARTIN-SSA B para 4.3.5

<sup>222</sup> See OBJ-002-TRANS-POE-RUSSELL-SSA-B App 1 & 2

<sup>223</sup> RES-TRANS-POE-MARTIN-SSA B para 4.3.9 – 4.3.16 and evidence in chief and OBJ-002-TRANS-POE-RUSSELL-SSA-B App 1 & 2

for the A470, has indicated that the proposed works incorporate “*significant improvement*” to the junction<sup>224</sup>. This is one of a number of highway benefits arising from the proposal.

171. Works on section 3 of the road (Talerddig to Access Point 4) are limited to the provision of a number of intervisible passing bays suitable for HGV passing. The passing bays consist of improving existing passing bays using grass reinforcement or creating new asphalt car-sized passing bays extended to cater for HGV traffic using permeable grass reinforcement<sup>225</sup>. PCC raise no concerns with respect to these works and accept that they provide community benefit<sup>226</sup>.

172. Turning to the northern section of the road to which PCC raise objection. A new off-road track will be constructed to the east of the existing Llanerfyl A458 junction to provide a suitable means for AILs to join the county road without impacting upon the area around the junction. Works will be undertaken where necessary on the county road to provide a minimum road width of 4.5m with the widening delivered through use of permeable grass reinforcement. Passing places are provided together with structural improvements at four locations<sup>227</sup>. PCC’s witnesses queried whether 4.5m width of road would be sufficient but Collett and Sons has confirmed that this would be sufficient<sup>228</sup>. MR accepted that 4.5m would be sufficient in the light of the e-mail from Collett and Sons<sup>229</sup> and this disposed of many of the points made by PCC’s witnesses.

173. A note has been provided on the buildability of the proposals and no issue was taken about this by MR. He accepted that the proposals could be built as suggested<sup>230</sup>. Whilst he had made reference to the need for pre-construction surveys he agreed with KM that this was common practice. Furthermore he agreed that the weight of AILs and other construction traffic would not exceed that of a standard HGV which the county road was already designed

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<sup>224</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.5

<sup>225</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.5

<sup>226</sup> OBJ-002-TRANS-POE-RUSSELL-SSA-B para 3.43

<sup>227</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.7

<sup>228</sup> RES/004 and KM

<sup>229</sup> MR XX

<sup>230</sup> MR XX

to accommodate so there was no suggestion that further works beyond those proposed would be needed<sup>231</sup>.

174. The construction of the highway works will require a number of temporary road closures. The details of these closures were set out in a note prepared by AECOM and issued to PCC on the 27<sup>th</sup> August 2013<sup>232</sup>. The note is reproduced in Appendix 2 to KM's proof. The note explains that the timeframes are described in proportions of shifts and days. A shift is either the inter-peak period of 9.30-15.30 or 20.00-06.00. It can be noted that there are only 3 locations where any closure would exceed one shift and in most cases any closure would only be for part of a shift whilst tie in was achieved with the road works. KM explained (as is also seen in the note) that road works would not be left in place after a shift (i.e. that traffic controls would not be left in place outside actual working).

175. The note reveals that at worst there would be 15 days affected by temporary road closures during the 9 month highway works construction period. Furthermore such closures would take place outside peak periods so that school and work trips would not be affected<sup>233</sup>. This means that for 95% of the construction period there would be no impact arising from road closures. Even then peak period traffic would be unaffected and also large parts of the route would be unaffected at any one time. There are low levels of traffic which might be affected as a result of any road closures. During the daytime peak up to 10 vehicles per hour might be affected whereas at night it might be 1 vehicle per hour<sup>234</sup>.

176. The Note has been considered by Jones Bros a well known contractor with extensive road construction experience in North and Mid Wales and in the construction and improvement of county roads leading to wind farms. They concluded that the Note was "*a good and reasoned representation of the number and duration of temporary closures required*" but they also indicated that "*there would be ample opportunity to reduce the number and impact of*

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<sup>231</sup> MR XX and see RES-TRANS-REBUTTAL -MARTIN-SSA B para 1.13

<sup>232</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.14

<sup>233</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.16-17

<sup>234</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.15

*closures required*<sup>235</sup>. MR agreed in XX that Jones Bros are very experienced in these matters and he did not take issue with their assessment.

177. MR also agreed the following –

- i) The works near to the school would be undertaken during school holidays or at weekends.
- ii) There would be extensive consultation with the local community to establish a travel diary to detail whether there are certain journey requirements that the construction traffic management plan should take account of.
- iii) There will be extensive communication of the temporary closures – press coverage, radio, leaflet drops and the use of signage at either end of the road
- iv) Some people will choose to make their journey on other days such that the traffic numbers affected will be less than the above.
- v) Some of the traffic numbers will not be affected by some of the temporary closures as they only affect part of the road at any one time.

178. In the circumstances the short term duration of the closures, the times of the day proposed and the associated traffic levels at these quieter periods and the alternative routes available combine to establish that this would involve an acceptable short term impact to background traffic<sup>236</sup>. It must also be noted that temporary closure of this road from time to time can inevitably be expected arising from highway works irrespective of whether or not this proposal is consented.

179. Consideration has been given to the impact of the traffic associated with the development on the county road. Applying the IEA Guidelines there would be no discernible impact on the most environmentally sensitive and most populated northern section of the road (section 1) with a maximum daily

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<sup>235</sup> RES-TRANS-POE-MARTIN-SSA B App 2 and para 4.9.18

<sup>236</sup> RES-TRANS-POE-MARTIN-SSA B para 4.9.19

increase in the peak month of just 5.95% (40 vehicles)<sup>237</sup>. There would be greater increases on sections 2 and 3 of the road but even then the absolute numbers are modest and would give rise to no more than a slight to moderate impact<sup>238</sup>. In practice it is the effect of the use of the road by AILs which has been the source of objection.

180. An average speed of 10mph has been adopted for AILs using the county road with a lower speed of 3mph at Gosen and Dolwen Isaf where this is thought to be appropriate. These times are supported by Collett and Sons Ltd who are experienced in the transport of these components and have undertaken independent validation of the county road works<sup>239</sup>. A point was taken by a number of PCC's witnesses as to whether a lower speed would be used at a greater number of locations, but Collet and Sons has confirmed that apart from those two locations a speed of 10mph is appropriate<sup>240</sup>, and this was accepted by MR in XX.

181. The journey times for AIL deliveries are set out at Table 11 of the LTMP. As can be seen the times between passing places would vary between 20 minutes to 7 minutes<sup>241</sup>.

182. The county road is very lightly trafficked. Indeed MR makes this point in seeking to dismiss the benefits arising from the proposal<sup>242</sup>. Given the low levels of traffic this would mean that there would be a maximum of between 2 and 3 vehicles waiting at any of these passing places throughout the delivery period with up to 3 to 5 vehicles following the convoy<sup>243</sup>. MR agreed that these figures compare favourably with the level of delay to traffic on the A458 which would be involved in using the shared access to Carnedd Wen<sup>244</sup>; the figures are set out in STMP 3 of 6 – there would be queues of 15 to 16 vehicles waiting at passing places with a queue of 12 to 13 vehicles following the AIL. Furthermore MR agreed that delays would be less

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<sup>237</sup> RES-TRANS-POE-MARTIN-SSA B para 4.7.16

<sup>238</sup> RES-TRANS-POE-MARTIN-SSA B para 4.7.16

<sup>239</sup> RES-TRANS-POE-MARTIN-SSA B para 4.8.2

<sup>240</sup> See RES/004 and KM in chief

<sup>241</sup> RES-TRANS-POE-MARTIN-SSA B para 4.8.3

<sup>242</sup> See OBJ-002-TRANS-POE-RUSSELL-SSA-B para 3.4 and See OBJ-002-TRANS-RUSSELL-REBUTTAL-SSA-B para 2.28

<sup>243</sup> RES-TRANS-POE-MARTIN-SSA B para 4.8.4

<sup>244</sup> MR XX

acceptable on a trunk road, where people expect to be able to progress more expeditiously, than on a minor county road such as the Talerddig to Llanerfyl road. He also agreed that this was all the more the case given the role of the A458 as the gateway to the National Park and that there was less opportunity, given the nature of the traffic carried, to warn users of the trunk road about the likelihood and timing of any delays and so enable them to avoid the delays<sup>245</sup>.

183. It is clear from the evidence that if any point were to be taken about delays arising consequent upon AIL deliveries to the site the use of the county road is in fact better than use of a shared access with Carnedd Wen and the consequent additional delays on the A458.

184. There are a number of significant highway benefits arising from this proposal<sup>246</sup> –

- i) The improved A470 Talerddig junction which will benefit all minor road traffic including HGVs.
- ii) The improved passing potential throughout the length of the county road. Indeed PCC requested that they be provided in asphalt as it recognised their long term benefit for the community.
- iii) The widening and improvement of Gosen Bridge which allows two-way traffic movement. Local residents have expressed concern about the current condition of the bridge and the near misses which have arisen through the one-way working on the current bridge.
- iv) Additional safety features at the bridge.
- v) The stabilisation of the existing slopes to the bridge which are showing signs of slippage together with the provision of increased vegetation.

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<sup>245</sup> MR XX

<sup>246</sup> Accepted by MR in XX and see RES-TRANS-POE-MARTIN-SSA B para 4.9.20

- vi) The improvement of Diosg Bridge together with the provision of a parking area.

185. In conclusion the proposal follows an access strategy which has been recognised by PCC as sensible<sup>247</sup>. The works have taken into account landscape, visual and ecological issues. They provide for safe access to the site. Any disruption to local people has been kept to a minimum. The proposals provide for long term community benefits. There are no highway related reasons for resisting this development.

### **Noise impacts – matter 6**

186. Noise was not a contentious issue with respect to the SSA B sites and in the event Dr McKenzie’s evidence was not subject to any challenge.

187. Dr McKenzie explained that having regard to the background noise measurements<sup>248</sup> the operational noise from the turbines would be within both the night-time and day-time limits with a minimum margin of over 3dB at any location<sup>249</sup>.

188. Dr McKenzie also dealt with the issues of tonal noise, infrasound, low frequency noise and vibration and explained why none of these issues created any problem<sup>250</sup>.

189. The issue of blade swish or amplitude modulation (AM) was addressed in Dr McKenzie’s original proof<sup>251</sup> and his Supplementary Proof of Evidence which considered the outcome of the Renewable UK report<sup>252</sup>. There has been no Government response to the Renewable UK report<sup>253</sup> and there is no

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<sup>247</sup> RES-TRANS-POE-MARTIN-SSA B para 9.3

<sup>248</sup> As to which see RES-NOISE-POE-MCKENZIE-SSA-B paras 8.2-8.3

<sup>249</sup> RES-NOISE-POE-MCKENZIE-SSA-B para 8.7

<sup>250</sup> RES-NOISE-POE-MCKENZIE-SSA-B paras 8.9 -8.12

<sup>251</sup> RES-NOISE-POE-MCKENZIE-SSA-B para 8.8

<sup>252</sup> RES-NOISE-POE\_MCKENZIE-S4

<sup>253</sup> RES-NOISE-POE\_MCKENZIE-S4 para 4

uniformity of response in decisions<sup>254</sup>. The RUK report reveals that the potential for AM effects is principally caused by wind shear where the installed turbine is susceptible by way of its operational parameters. There are relatively low levels of wind shear at the Llanbrynmair site even at night time and accordingly there is no reason to believe that AM would be an issue at Llanbrynmair<sup>255</sup>. It is also important to recall that AM is not an issue at the vast majority of wind farm sites<sup>256</sup>. In the circumstances a condition is not necessary in this case even if one were to apply a rigorous test.

190. Construction activities at Llanbrynmair would be limited to 0700 – 1900 Monday to Saturday except during turbine erections and commissioning. On-site construction noise would be less than the levels identified in BS5228 (the appropriate standard) even when construction traffic noise is included although Saturday afternoon working would be restricted<sup>257</sup>. There is no issue with respect to traffic noise on the wider road network<sup>258</sup>.

191. Detailed assessment of the cumulative noise associated with Llanbrynmair and Carnedd Wen shows that the night and upper day-time noise limits are met by a minimum margin of 2.5dB and 1.6dB respectively using conservative assumptions<sup>259</sup>. Notwithstanding this assessment the developers of Llanbrynmair and Carnedd Wen have agreed noise limits for their respective sites which would prevent any exceedance of the appropriate ETSU derived noise limits<sup>260</sup>.

192. In the circumstances the proposal does not give rise to any noise related ground for objection.

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<sup>254</sup> See OBJ-002-NOISE-POE-BUFTON-S4

<sup>255</sup> RES-NOISE-POE\_MCKENZIE-S4 paras 5 and 6 and RES-NOISE-POE-MCKENZIE-SSA-B para 7.19

<sup>256</sup> Bullimore and McKenzie – Hearing session 3/4/14

<sup>257</sup> RES-NOISE-POE-MCKENZIE-SSA-B paras 8.14-8.15

<sup>258</sup> RES-NOISE-POE-MCKENZIE-SSA-B para 8.16

<sup>259</sup> RES-NOISE-POE-MCKENZIE-SSA-B paras 9.2 and 9.3

<sup>260</sup> RES-NOISE-POE-MCKENZIE-SSA-B para 9.5

## Ecology – matter 7

### Introduction

193. The application site does not lie within any protected nature conservation sites but careful consideration has been given to sites in the vicinity of the application site. The only international site which required consideration is the Berwyn SPA which is of particular interest for its breeding populations of harrier, merlin and peregrine and which is also a SAC with its main interest being its blanket bog habitat. There are also a number of SSSI that have been considered. A range of detailed studies have been undertaken with respect to ecological and particularly ornithological interests associated with the wind farm proposal.
194. With respect to ornithological interest the species of particular importance were curlew, black grouse, hen harrier, red kite, and barn owl. The risks associated with development of the site have been assessed in accordance with accepted good practice and these assessments have revealed that there is no likely significant collision risk and no likely significant disturbance risk to any species that could be possibly linked to the Berwyn SPA and no adverse effect on the integrity of the SPA. There would also be no significant effects on any bird population in EIA terms<sup>261</sup>. The evidence establishes that the proposal would not result in any significant ornithological impacts. Indeed it proved unnecessary for Dr Percival to attend at the inquiry.
195. It can be noted that NRW has advised that an Appropriate Assessment is not required with respect to Llanbrynmair<sup>262</sup>.
196. It is common ground between RES, PCC and NRW that the ecological impacts of the wind turbines are acceptable. Such ecological impacts and the proposed mitigation are considered fully in the CSEI.<sup>263</sup> Such a powerful consensus of professional evidence should be afforded substantial weight by

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<sup>261</sup> RES-ORN-POE-SSA-B para 9.1

<sup>262</sup> CON-003-004-Opening session- Rog-comms-II – para 7.2

<sup>263</sup> see SEI Aug 2013 Vol I Ch 5 – Ecology, Ch 6 – Ornithology, Ch 8 – Geology, Hydrology and Hydrogeology, including impact to Peat and the SEI October 2013 concerning the impact to Bats

the Secretary of State in the determination of the application. Given the absence of any objection to the ecological impacts of the wind turbines supported by independent, objective and professional assessment, this issue is not considered further in this Closing Submission. It is clear that there is no identifiable conflict with any national or local planning policy, arising from the wind turbines (and associated infrastructure).

197. The sole ecological concern of PCC and NRW is over the impact of the access route required for AIL delivery from Llanerfyl to Talerddig. PCC and NRW essentially raise two issues:<sup>264</sup>

- i) The adequacy of the ecological assessment in the Environmental Statement (ES);
- ii) In relying on the access between Llanerfyl to Talerddig, the applicant has not done all it reasonably can to mitigate the development's impacts because an access via Carnedd Wen would avoid any such impacts.<sup>265</sup>

198. In its Note<sup>266</sup>, PCC submit that there are 3 ways in which the Secretary of State could address the second issue:

- i) The Secretary of State could refuse consent, leaving it to RES to re-formulate the scheme with a fresh application including revised access proposals; or
- ii) The Secretary of State could grant permission for the wind turbines at Llanbrnymair but subject to a condition that the Llanerfyl to Talerddig access is not implemented; or
- iii) The Secretary of State could indicate that he is "minded to" grant permission subject to an alternative access scheme.

199. Since then, entirely without prejudice to the contention that the original access is (and always has been) acceptable, RES has submitted details of an

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<sup>264</sup> see especially the evidence of DW and PCC Note on Reasons for Considering Llanbrnymair Alternative Access and Practicalities of Implementation

<sup>265</sup> *ibid* para 6

<sup>266</sup> *ibid* para 9-13

alternative access proposal via Carnedd Wen.<sup>267</sup> The alternative access proposal has been the subject of Environmental Impact Assessment and PCC has provided a formal response.<sup>268</sup> PCC recognises that the proposed alternative access is substantially similar to the access first promoted by PCC in September 2013 and which formed the basis of PCC's written and oral evidence in Session 2.<sup>269</sup> PCC's position is that<sup>270</sup> it would have no objection to the route of the alternative access route (noting that the sole difference with their proposal was a slight change to the northern link, which is uncontroversial).<sup>271</sup> PCC's position is that there are no ecological impacts which could justify refusal of consent.<sup>272</sup> Accordingly, PCC's position is that it would have no objection to the Secretary of State granting consent for the development with the revised access proposal. PCC does, however, maintain its objection to the original AIL access proposal.<sup>273</sup>

200. Whilst RES has been prepared to consider alternative routes raised at a late stage by PCC it remains concerned about the practical delivery and operation of the wind turbines. In this regard, RES are entirely in accord with national policy (of both England and Wales) which strongly supports the immediate delivery of wind energy generation for which there is an urgent need.<sup>274</sup>

201. It is in this context that the two main ecological issues will be considered.

(i) *The Adequacy of the ES*

*Legal Background*

202. The application seeks consent under s.36 EA 1989. The development is EIA development. Accordingly, the Secretary of State shall not grant a s.36

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<sup>267</sup> see the SEI Feb 2014

<sup>268</sup> See letter from PCC dated 13<sup>th</sup> March 2014

<sup>269</sup> *ibid* para 4

<sup>270</sup> *ibid* PCC response to Part 2 of the SEI

<sup>271</sup> *ibid* para 11

<sup>272</sup> *ibid* paras 14 - 17

<sup>273</sup> *Ibid* para 27

<sup>274</sup> see earlier submissions on the need for the development

consent unless the requirements of regulation 4 The Electricity Works (EIA)(England Wales) Regulations 2000/1927 have been satisfied (see Reg 3(1)).<sup>275</sup>

203. There is no statutory provision as to the precise form of an Environmental Statement, even though the term “Environmental Statement” is defined in Reg 2(1). Reg 4(1) requires RES to submit an ES which includes:

- i) at least the information referred to in Part II of Schedule 4; and
- ii) such of the information referred to in Part I of Schedule 4 as is *reasonably required* to assess the environmental effects of the development and which, having regard in particular to current knowledge and methods of assessment, the applicant can *reasonably be required* to compile, taking into account the terms of any scoping opinion given.

204. RES is therefore required to provide *inter alia*:

- i) at least the data required to identify and assess the main effects which the development is likely to have on the environment (see para 3 Part II Sched 4 Regs); and
- ii) a description of the likely significant effects of the development on the environment, so far as is *reasonably required* to assess the environmental effects of the development (see Para 3 Part I Sched 4).

205. The Secretary of State must not grant consent under s.36 unless (so far as relevant to this decision<sup>276</sup>):<sup>277</sup>

- i) He is satisfied that the applicant has complied with his obligations under Reg 4(1); and

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<sup>275</sup> The 2000 Regs implement Council Directive 85/337/EEC as amended by Council Directive 97/11/EC on the assessment of certain public and private projects on the environment insofar as it relates to applications for consent to construct, extend or operate a generating station under ss.36 and 37 EA 1989

<sup>276</sup> no-one alleges a failure to comply with regulations 9, 10(2A), 11, 12, 13, 14 and 14A so Reg 4(2)(c) does not apply

<sup>277</sup> Reg 4(2)

- ii) he has taken into consideration the environmental information<sup>278</sup> and states in his decision in relation to that consent that he has done so.

206. The Courts have been required to consider the adequacy of environmental statements on a number of occasions in different statutory contexts. A number of relevant principles have emerged from the decided cases, which would apply equally to a determination under the 2000 Regs.

207. It is for the Secretary of State to decide on the adequacy of the ES (per Sullivan J in *R v Rochdale MBC ex p Tew, Milne and Garner* [2000] JPL 54). Further, the Secretary of State is not deprived of jurisdiction to grant consent merely because he has decided that the ES is deficient, *unless* the alleged deficiencies in the ES are so serious that the document could not reasonably be described as an ES (as defined by the Regs). In *R (Blewett) v Derbyshire CC* [2003] EWHC 2775, Sullivan J held:

*“In the light of the environmental information the local planning authority may conclude that the environmental statement has failed to identify a particular environmental impact, or has wrongly dismissed it as unlikely, or not significant. Or the local planning authority may be persuaded that the mitigation measures proposed by the applicant are inadequate or insufficiently detailed. That does not mean that the document described as an environmental statement falls outwith the definition of an environmental statement within the Regulations so as to deprive the authority of jurisdiction to grant planning permission. The local planning authority may conclude that planning permission should be refused on the merits because the environmental statement has inadequately addressed the environmental implications of the proposed development, but that is a different matter altogether. Once the requirements of Schedule 4 are read in the context of the Regulations as a whole, it is plain that a local planning authority is not deprived of jurisdiction to grant*

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<sup>278</sup> defined in Reg 2(1)

*planning permission merely because it concludes that an environmental statement is deficient in a number of respects.*

*Ground 1 in these proceedings is an example of the unduly legalistic approach to the requirements of Schedule 4 to the Regulations that has been adopted on behalf of claimants in a number of applications for judicial review seeking to prevent the implementation of development proposals. The Regulations should be interpreted as a whole and in a common-sense way. The requirement that "an EIA application" (as defined in the Regulations) must be accompanied by an environmental statement is not intended to obstruct such development. As Lord Hoffmann said in **R v North Yorkshire County Council ex parte Brown** [2000] 1 AC 397, at page 404, the purpose is "to ensure that planning decisions which may affect the environment are made on the basis of full information". **In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the "full information" about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations (Tew was an example of such a case), but they are likely to be few and far between.***

*It would be of no advantage to anyone concerned with the development process – applicants, objectors or local authorities – if environmental statements were drafted on a purely "defensive basis", mentioning every possible scrap of environmental information just in case someone might consider it significant at a later stage. Such*

*documents would be a hindrance, not an aid to sound decision-making by the local planning authority, since they would obscure the principal issues with a welter of detail.”*

208. The judgment of Sullivan J was upheld on Appeal and the above passage was specifically relied upon by the House of Lords in *R (Edwards) v EA and others* [2008] UKHL 22.<sup>279</sup>

209. Further, the 2000 Regs expressly recognise that the information contained in the ES may be inaccurate, inadequate or incomplete. It is for this reason that the 2000 Regs require the ES to be publicised and consulted upon. This was the view of Sullivan J<sup>280</sup> in *R (Blewett) v Derbyshire CC* [2003] EWHC 2775.<sup>281</sup> Indeed, the Secretary of State, when dealing with a s.36 consent, has a statutory power to require (in writing) the applicant to provide such further information as may be specified concerning any matter which is required to be dealt with in the ES (Reg 13(1)). If<sup>282</sup>, therefore, the ES is inadequate, the Secretary of State has the power to remedy such inadequacy without resorting to refusing consent – the Secretary of State can simply require further environmental information. It should be noted that, at the time of this Closing Submission, the Inspector (in the light of the evidence of PCC and NRW) has not requested RES to provide any further environmental information or suggested that RES should do so.

210. It is in this context that the alleged inadequacies of the ES must be considered.

#### *The Environmental Information*

211. The Environmental Information submitted in respect of the AIL access route from Llanerfyl to Talerddig is contained in the Supplementary Environmental SEI, dated August 2013. This SEI superseded the original ES

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<sup>279</sup> The highlighted section above was quoted by Lord Hoffman with approval at para 38. This decision was taken in the context of the Pollution Prevention and Control (England and Wales) Regs 2000/1973.

<sup>280</sup> in the context of the Waste Management Licensing Regs 1994

<sup>281</sup> See paras 38 and 39

<sup>282</sup> which RES strongly dispute

and the 5 subsequent SEIs submitted between 2010 and 2012.<sup>283</sup> It was therefore referred to as the Consolidated SEI (CSEI). Additional information was submitted in October 2013 on bats (the Bat SEI).

212. In an appendix to his written evidence, Dominic Woodfield (DW) submitted a critique of this environmental information (DW 8<sup>284</sup>). RES responded in detail to DW 8 in written evidence to the Inquiry. A number of errors and omissions were rightly identified by PCC but that is of no consequence. On the contrary, as Sullivan J held, this is one of the purposes of the consultation process (*supra*). RES has not accepted that any of the identified errors and omissions were such as to render the ES legally inadequate. However, entirely without prejudice to that position and in order to avoid any subsequent debate on the issue, RES submitted further environmental information in February 2014. This has been the subject of an audit by PCC, which particularises (at Annex 1) PCC's concerns over the alleged inadequacies of the ES.<sup>285</sup> There is no dispute that the environmental information (February 2014) has been submitted and publicised in accordance with the statutory requirements. It is common ground, therefore, that it forms part of the environmental information for the purposes of the decision. This means that DW's criticisms of the ES which have now been addressed are no longer relevant (even though reference is still made to them by PCC in their consultation response).

#### *RES Submissions on the Adequacy of the ES*

213. It is noteworthy that nowhere in their written evidence and/or submissions to the Inquiry have PCC ever made reference to the relevant legal background. No reference is made to the relevant legal tests in PCC's Outline SoC, the SoC for Session 2, the written evidence of DW (in all its rebuttal forms) or the March 2014 response. Such an omission is all the more glaring given the depth to which the relevant legal tests have been addressed in respect of the alternative access. RES submit that it is PCC's failure (and

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<sup>283</sup> Which were submitted to address changes in the proposal and to answer requests for further environmental information

<sup>284</sup> The latest version of DW 8 was contained in DW's third rebuttal

<sup>285</sup> See their formal response from Trystan Mabbitt dated 13<sup>th</sup> March 2014

especially DW's failure) to identify the relevant legal tests and to test the alleged inadequacies against such tests which have led them to a fundamentally flawed position.

214. DW fundamentally fails to address *why* the environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations. Rather, DW's evidence adopts the "unduly legalistic approach" expressly deprecated by the Courts and is premised on the basis that *any* alleged deficiency or difference in ecological judgment justifies the conclusion that the ES is legally "inadequate".

215. In DW8<sup>286</sup>, DW asserts that "a large number" of his points "highlight the lack of transparency and absence of full and objective reporting." Given the very large amount of detail contained in the environmental statement, RES submit that it is impossible for the Secretary of State to conclude that there has been a lack of transparency and/or a lack of reporting. Further or alternatively, this demonstrates the flaw in DW's approach to the ES. There is no legal requirement for there to be "full" reporting and/or total transparency. Rather the legal requirement is for (i) the data required to identify and assess the main effects on the environment and (ii) a description of the likely significant effects of the development so far as is *reasonably* required to assess the environmental effects of the development. Sullivan J expressly recognises that an ES should not contain "every possible scrap of environmental information" as it would then become a hindrance to decision making. An approach which is proportionate to the significance of the impact is required. It follows that DW and PCC have manifestly followed the wrong legal approach in concluding that the ES is inadequate.

216. The alleged inadequacies in PCC's evidence can conveniently be addressed under 5 headings.

i) Habitats and Vegetation

217. PCC's concerns relate to:

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<sup>286</sup> the version in rebuttal proof 3

- i) The adequacy of the botanical surveys along the access route; and
- ii) The adequacy of the impact assessment on peat (primarily in respect of the Neinthirion Bypass (“the bypass<sup>287</sup>”)).

*Adequacy of the Botanical Surveys*

218. The adequacy of the botanical surveys has been raised as a generic point in DW 8. RES responded fully to this criticism in the *Llanbrynmair Access Route – Note on Habitat Surveys*.<sup>288</sup> Whilst the note accepts that accidental errors<sup>289</sup> were made in App 5.3 CSEI Vol II<sup>290</sup>, such errors have been addressed by the SEI (Feb 2014) and are of no further relevance.

219. Habitat surveys were carried out in August 2010 and repeated in April 2013, with further visits in May 2013 following minor changes to the physical works proposed. In addition further visits were made through October and November 2013 to address specific issues raised in the evidence of PCC and NRW.

220. All sections where works are proposed were visited by an experienced surveyor and the habitats were classified using the categories described in the ‘Phase 1 Handbook’ (Part 2, Chapter 2). This method is acknowledged as being particularly useful in EIA studies.<sup>291</sup> It is clearly an appropriate methodology (and the contrary is not argued by PCC in DW’s evidence). Indeed, this standard methodology for assessing habitats was used in the 2010 surveys which were included in SEI 2 (2011) and no comments on the methods or results were received from CCW or PCC.

221. All areas where works are proposed were visited and the habitats present were examined. Following close examination the sections of habitat were classified using one of the standard ‘Phase 1’ categories, and a list of typical species was included where appropriate. The recommended unit for Phase 1

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<sup>287</sup> It should be noted by the Secretary of State that “bypass” is a rather grand and misleading term for a section of the route which will be grassed and less discernible than a farm access track

<sup>288</sup> This was a note submitted to the Inquiry by Mick Green

<sup>289</sup> For example a summary of Appendix 5.3 was submitted instead of the full version

<sup>290</sup> See the note at paras 1.1.4 to 1.1.6

<sup>291</sup> Hill et al 2005 Handbook of Biodiversity methods, Cambridge

habitat assessment habitat is 0.1 ha or above. In many cases the sections assessed were in smaller units due to the nature of the works being proposed. Any areas of particular interest were noted and typical species were identified.

222. DW 8 suggests that where a single species (regardless of its prevalence) has been identified which is not identified in the survey, the ES is legally flawed. Such an assertion is absurd. The 'Phase 1' methodology aims to assess the habitat overall, and it not intended to be a complete list of all species present. The ES is concerned with significant impacts not any impact. In this case the 'Phase 1' survey method was followed and all sections where works were required were surveyed at least twice. The surveys were carried out by an experienced surveyor with over 20 years' experience of 'Phase 1' surveys in Montgomeryshire. The surveys are demonstrably adequate (judged against the relevant methodology) and sufficient to allow the potential of the impacts of the proposed works to be properly assessed.

223. The results of the assessment are considered fully in the note.<sup>292</sup> Overall, it is considered that, following re-planting of hedges and with management of hedges and verges, there will be no long-term significant adverse impact on the nature conservation interest of the area. On the contrary, there will be a net benefit/neutral impact in terms of the access route alone. The net ecological benefits are enhanced, when the site of the wind turbines is also considered because of the ecological benefits associated with the Habitat Management Plan and the Peat Management Plan.

#### *Adequacy of the Peat Assessment at Neinthirion*

224. Peat probing along the route of the bypass was undertaken by Ecology Matters<sup>293</sup> as part of the wider survey and assessment of the site in February and March 2013. Further habitat assessment was undertaken in May 2013. The peat depth was assessed by probing with a cane as outlined in the CCW

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<sup>292</sup> See paragraphs 1.3.1 to 1.4.5

<sup>293</sup> A not for profit organisation who work closely with NRW and who have employed methodologies which have been consistently accepted by NRW in the past on other projects

guidance note<sup>294</sup> and the methodology employed followed that guidance. The need for peat probing was determined by a peat assessment process.<sup>295</sup>

225. Probes were taken approximately every 10 metres from the existing road along the line of the proposed bypass, where it crosses a section of peat. While the remainder of the access route was assessed for the presence of peat, no further probing took place (outside the route of the Neinthirion bypass) because no peat was found and no further probing was necessary. At Ch 650<sup>296</sup> of the bypass, there was a narrow strip of purple moor grass, which can be indicative of peat. This was specifically assessed and found to be on mineral soil.

226. The results are set out in the Note. The maximum depth along the access route was 50cm of peat. From the extensive peat probing across the whole of the application site (including the wind farm site), it is clear that peat depths are highly variable and not homogenous. Therefore it is essential to probe within the bypass boundaries to ensure an accurate peat depth is established. Nearby peat probes (outside the boundary of the bypass) may not be accurate in assessing the impact of the bypass because of the lack of homogeneity.

227. The habitat was re-surveyed for NVC classification (in the light of DW's evidence). The habitat along the proposed bypass route currently conforms most closely to U6 *Juncus squarrosus* – *Festuca ovina* grassland. It has probably derived from M17 *Trichophorum cespitosum* – *Eriophorum vaginatum* blanket mire but the original constituents of the vegetation are now at most occasional within the sward. These include rare occurrence of *Sphagnum papillosum*, occasional *Sphagnum fallax* and rare occurrence of cranberry *Vaccinium oxycoccos*. All other species are typical of U6. These include frequent heath rush *Juncus squarrosus*, frequent *Aulacomnium palustre*, frequent *Polytrichum commune* and frequent bilberry *Vaccinium myrtillus*. Purple moor-grass *Molinia caerulea* is also frequent here. The route of the proposed new track crosses the edge of this U6 grassland area, before crossing two small ditches. These ditches support M6d (*Carex*

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<sup>294</sup> CCW (2010) Assessing the impacts of windfarm developments on peatland Guidance Note.

<sup>295</sup> This process is set out in the Note submitted by RES on the impact on peat at Neinthirion

<sup>296</sup> The reference is to the chainage on the bypass

*echinata* – *Sphagnum fallax/denticulatum* mire; *Juncus acutiflorus* sub-community), dominated by sharp-flowered rush and *Sphagnum fallax*.

228. The wider area of the proposed bypass has been subject to heavy grazing over many years, as characterised by the presence of frequent heath rush. NRW consider the area to still conform to M17. In the light of repeated surveys, part of this area could be classified as M17c. However, this is confined to the central ‘core’ of the small peat body, located to the east of the bypass. The vegetation surrounding this core has been modified greatly, due to drainage and heavy grazing. This is indicated by the presence of abundant heath rush and a paucity of bog-moss (i.e. *Sphagnum*) species. Undoubtedly the area has derived from M17, but it is now degraded to such an extent that it is better and more accurately categorised as U6. This is particularly the case in the immediate area proposed for the bypass, where very few bog species are still present. Species indicative of semi-improved grassland are also present in the vegetation.

229. This classification is not accepted by DW (despite PCC not having undertaken any formal assessment). However, the dispute must be resolved through the exercise of a subjective professional judgment on the basis of a detailed site visit. It is unanswerable that the ES is based on such a professional judgment in the light of repeated site visits and in accordance with an NRW sanctioned methodology. Taken uncritically and at their highest, the criticisms of DW fail to demonstrate that the ES is legally inadequate and/or cannot reasonably be considered to be an ES for the purposes of the 2000 Regulations.

230. Further, DW’s evidence fails entirely to place the impact on peat in any context. The central section of the bypass is on 50cm peat (just within the CCW / NRW classification of deep peat). The impact was assessed to be to a volume of peat of 636 m<sup>3</sup><sup>297</sup> which has been quantified as part of the carbon calculation process.

231. John Ferry has re-assessed the area of peat which is to be impacted by the Neinthirion bypass (in the light of DW’s written evidence). On the basis of

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<sup>297</sup> see rebuttal of Mick Green Appendix C

the two depths of 30cm and two depths of 50cm recorded within the red line of the bypass alignment (a length of 50m in the peat), a bypass width of 6m and peat depth of 0.5m, the development will disturb 150m<sup>3</sup> of peat which led to Mr Ferry assessing the volume of peat to be impacted by the bypass to be between 100-200 m<sup>3</sup>.<sup>298</sup>

232. Such an impact needs to be considered in the context of a total estimated peat disturbance impact across the application site of 120,000 m<sup>3</sup>. The volumes do not take account of the likely overestimate of peat depths nor to micro-siting of track and turbines away from peat >0.5m subject to other constraints.

233. The assessment of this impact has a margin for error of 10-15%.<sup>299</sup> Accordingly, the impact of the development on peat at Neinthirion is estimated by John Ferry to be less than 0.2% of the total estimated impact and well within the margin for error. Even on the basis of Mr Woodfield's assessment (which is not accepted), the impact (assessed by him to be 1500m<sup>3</sup>) is 1.25% and well within the margin for error.

234. On this basis the impact on peat at Neinthirion is simply not material. It is for this reason that the peat probing data was not included in the ES or SEI.<sup>300</sup> It was not reasonably required to be included because it is not relevant to any significant impact.

235. Indeed, the volume of peat disturbed at Neinthirion can be contrasted with the volume of peat which PCC would be content to see disturbed as part of its alternative access proposals.

236. At this stage of the proposed development, detailed mitigation has not been agreed with NRW. However, there will be a condition requiring such mitigation (see John Ferry in XX). The Habitat Management Plan and Peat Management Plan (appended to Chapter 5 and 8 of the CSEI) propose mitigation measures that will further minimise any impacts from loss of peat habitat, peat excavation and dewatering. They also outline long term habitat restoration and management compensation measures designed to enhance the

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<sup>298</sup> see John Ferry in EiC and XX

<sup>299</sup> see John Ferry in answer to an Inspector's Question

<sup>300</sup> see XX of John Ferry

peat on the site. The area of peat restoration to compensate for the volume of peat dewatered through the installation of any windfarm infrastructure is 200 ha for blanket bog and mire restoration and 149 ha of forest on previous peat habitats which will be removed and habitats of conservation importance restored.

237. The consequent peat habitat restoration is substantially greater than the area of peat habitat that will be lost. Therefore, the residual predicted impact of the development (taking into account the non-material impact to peat at Neinthirion) is adequately mitigated and is actually a net gain.

238. This conclusion is not disputed by NRW (the relevant statutory body). It is submitted that substantial weight should be attached to this agreement. Indeed, NRW has independently surveyed the site of the proposed Neinthirion bypass and presented peat probe data (See DWR2-4). Only two probes appear to be on the proposed route. The NRW assessment shows a broad agreement with the probe depths of Ecology Matters. This further supports the RES submission that the assessment has been adequate.

239. Since NRW's survey (believed to be May 2013 but not shared with RES), NRW has specifically withdrawn any objection to the impact of the development on peat and peat habitats on the application site (which includes the route of the proposed bypass).<sup>301</sup> Such a position has clearly been informed by its own survey. Self-evidently, NRW would not have withdrawn the objection if it considered that the level of assessment (either from RES or itself) was inadequate.

240. Accordingly, it can be concluded that the impact on peat at Neinthirion:

- i) Has been robustly assessed by a competent independent assessor in accordance with a published methodology;
- ii) Has been taken into account in the carbon calculator;
- iii) Has been taken into account in assessing the environmental impact of the development;

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<sup>301</sup> see NRW email appended to this note on Impact of the Neinthirion Bypass on Peat Appendix 1, which was an email from NRW dated 8<sup>th</sup> October 2013.

iv) Has been mitigated, such that the net impact is beneficial.

ii) Otters

241. Otter surveys were undertaken in 2010 and 2013 by Mick Green (MG) of Ecology Matters. In 2010, the surveys were undertaken in August over a number of days. In 2013, the otter surveys were undertaken on 10th and 11th May 2013. As otters are active all year, these are appropriate times of year for surveys.

242. Specific otter surveys were undertaken at a number of specific locations.<sup>302</sup> At Gosen Bridge<sup>303</sup>, the survey covered the area from the minor road bridge to the confluence on both sides of the river, and upstream to 100 m above the bridge. The site was accessed from the minor road bridge and the road immediately south of Gosen Bridge for the main Afon Gam and through the woodland area and from the fields above for the Afon Cledan beneath the bridge. A short section (approximately 20m) immediately upstream of the bridge was not accessible due to fallen tree and river bed conditions, but was surveyed from below within the stream and from above (from the bridge) with binoculars. The use of the binoculars gave clear vision and so the lack of direct access was not an issue.

243. At Dolwen Isaf crossing, surveys were undertaken from SH979074 upstream to SH976307 along the Afon Gam, and from confluence to SH975074 upstream along Nant Ffriddycastell towards Dolwen farm including minor watercourse and drainage channel. This includes the bridge at Dolwen Uchaf. At Neinthirion the area of the proposed water crossing and a stretch 100 metres up and down stream were surveyed.

244. Otter surveys were carried out following the methods outlined in *The New Rivers and Wildlife Handbook* (RSPB, NRA & RSNC 1994). The riverbanks

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<sup>302</sup> These are particularised in the note on Otters submitted in November 2013

<sup>303</sup> The only area where a concern is raised in respect of otters

and any notable features were searched, mainly by walking the bank. Some wading was necessary to check all areas such as within the Gosen gorge. The main method was to search for spraints but other signs such as footprints and otter "runs" and "slides" were also looked for.

245. In such circumstances, the level and method of assessment was robust and certainly reasonable.

246. DW's criticisms of this assessment fail to realise that the presence of otters along the river was actually assumed in the rivers in the ES. This assumption was based on survey results from the wind farm site and on MG's experience of otters in Montgomeryshire. The purpose of the further surveys was not, therefore, to confirm the presence or absence of otters from the rivers but rather to assess the potential impact of the proposed works on otters.

247. No signs of otter were found during either of the surveys (in 2010 and 2013). There is no evidence from any other party to contest such results. This is an important context for a consideration of the likely impact of the road works on otters.

248. DW has found evidence of spraints at Dolwyn Isaf bridge, which Mick Green has confirmed when he undertook a site visit in November 2013. This area had been specifically surveyed previously. There was, however, no sign of otter at this site in 2010 or at the times of the May 2013 survey. This suggests (to the reasonable assessor) that otters are present in the rivers. However, this is not a new revelation or a deficiency in the ES because the presence of otters had always been assumed. The presence of a spraint in November 2013 does not mean that the surveys in 2010 and 2013 were inadequate. Rather it suggests that otters move along the river (again: as specifically assumed in the CSEI).

249. DW seeks to present the evidence of the spraint as meaning that MG's surveys had either been undertaken inadequately or incompetently. Yet, this conclusion does not follow from the evidence at all. It is far more likely that the spraint occurred after the May 2013 surveys. This is the most plausible explanation and the only one which is consistent with the evidence. Whilst DW does not seem to accept this, this only serves to re-inforce the impression

that he has lost all sense of proportion in his analysis of the evidence submitted by expert, independent ecological consultants.

250. An artificial holt is referred to in the Carnedd Wen ES. However, as MG explained in oral evidence, whilst he deliberately looked for it, he could not locate it. Whilst DW is critical of the ES for failing to consider the artificial holt, he has not located it himself. MG therefore concludes that it is no longer there. On this basis, there is no relevant omission.

251. There is potential for holts and lying up areas in the areas where physical works are proposed. These include the areas of tree roots and fallen trees around Gosen Bridge and the areas of wooded bank immediately up and down stream of Dolwen Isaf Bridge. Such areas have been specifically surveyed. There was no evidence of otters. The works proposed at Dolwen Isaf Bridge involve very little, if any, in-channel work. Therefore it is concluded that there is no possibility of a negative impact on otters. The river will not be blocked and no riverbank will be cleared. Otters will continue to be able to use the river as a transitory habitat without any material adverse impact.

252. The works proposed at Gosen, involving the bank works on the southern bank of the Afon Gam, do have potential to disturb otter if they are using this section of bank at the time of proposed works. There is no evidence of holts, or lie up areas (or any other evidence of otters) on the basis of the surveys. Otter will continue to be able to pass and re-pass the Gosen Bridge. Accordingly, a re-survey will be required prior to any works commencing to ensure that otters are not using this section of bank at the time of the proposed works. In this way, there will be no material adverse impact on otters at Gosen Bridge. Otters are both diurnal and nocturnal. Accordingly, it matters not from this perspective whether working is at day or during the night. This is, in any event, a matter which can be controlled by condition. As no sign of otters has been noted (either in 2010 or 2013 by either MG or DW) it is considered that any adverse impact (from working in either the day or night) is highly unlikely. Working is not precluded therefore by the presence of otters.

253. The proposed crossing for the Neinthirion bypass includes some habitat that is a possible lie up area for otters (based on the November 2013 surveys). This will, therefore, be re-surveyed prior to any works. The minor river and culvert crossings are not considered to have any potential to impact on otters.
254. Mitigation is proposed within the windfarm Habitat Management Plan with streamside planting and installation of artificial otter holts. The outline has been agreed with NRW as the relevant statutory consultee and will be secured by a condition. If otters are present at the time of the proposed works, the proposed mitigation will ensure that there is no material adverse impact upon them.
255. In the circumstances there will not be any material adverse impact on otters as a result of the proposed access route works.
256. In all the circumstances, the level of survey effort was manifestly robust and there is no conceivable evidential basis for concluding that the ES is inadequate and/or incapable of being described as an ES for the purposes of the Regulations.

iii) Dormice

257. In considering whether the assessment of the impact of the access road on dormice was adequate, it is important for the Secretary of State to note that *no-one* (whether RES, NRW or PCC) has ever detected any signs of the presence of dormice.
258. Further, the evidence of PCC and NRW fails totally to consider the relevant background. Whilst NRW suggest (now) that the survey methodology is not reliable<sup>304</sup>, such a position is not only inconsistent with NRW Guidance, it is also inconsistent with NRW's previous position on this application. The CCW scoping response of 22nd September 2006 addresses the required surveys for protected species. No reference was made to

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<sup>304</sup> see e.g. NRW proof at 5.4

dormice and there was no requirement for dormice surveys to be undertaken.<sup>305</sup>

259. This is not a surprise as there are no records for dormice in the vicinity of the application site. CCW's original position was, therefore, that a survey was not even required. Moreover, the first 3km of the access route (from Llanerfyl) has already been proposed as an access to the Mynydd Waun Fawr windfarm in a planning submission in 2007. This required similar works to this section of the county road. No dormice surveys were undertaken along the proposed access route. In response to that application<sup>306</sup>, CCW did not even raise dormice as an issue (even though they did raise concerns about other protected species).<sup>307</sup> CCW was, therefore, quite content for an application along this access route to be determined without a dormice survey (consistent with the scoping position).

260. NRW's current position that the survey is inadequate is wholly inconsistent with its original position and irrational: a survey which is not required cannot be inadequate. NRW has failed to explain (adequately or at all) the reasons behind its change in position.

261. Rather, it was during surveys of the proposed works along the access route that Ecology Matters (not PCC or NRW) considered certain areas to be suitable habitat for Dormouse. RES therefore considered it to be appropriate for surveys to be undertaken (of its own volition).

262. A survey of the access route for dormouse habitat was undertaken in August 2010, with a nut search undertaken in December 2010.<sup>308</sup> A desk study was undertaken using the National Biodiversity Network (NBN).<sup>309</sup> No dormice records were found for Cwm Eira at all.

263. There was not sufficient habitat to survey 10m x 10m plots, so the alternative survey method of collecting at least 100 nuts was employed. These were then examined using a hand lens to ascertain which species had opened the nut. For those areas considered as possible dormouse habitat an

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<sup>305</sup> See page 16 under "other mammals".

<sup>306</sup> whilst CCW requested that any hedgerows removed were translocated

<sup>307</sup> See Annex A at 3.5 - Mick Green rebuttal App 1.

<sup>308</sup> see SEI (2) 2011 at 4.1.1 to 4.2.3

<sup>309</sup> See SEI (2) at 4.3.3

evaluation of the habitat was made and nut searches were undertaken. The results of the nut search were as follows.<sup>310</sup>

- i) At the first two sites identified in the original survey (SJ 024087 and 012076) very little suitable habitat was found after close inspection, and no hazel nuts found.
- ii) At the third site (SJ004081) the hedge was very open and heavily flailed. No nuts were found.
- iii) At the final site (SJ004079) a total of 148 gnawed nuts were collected. 148 nuts were collected because they were all that was present. The species responsible were identified as follows: Bank vole – 11; Woodmouse – 5; Squirrel -103; Bird – 28; Unknown – 1.

264. The habitat was considered<sup>311</sup> to be of low quality and no evidence of dormice was found. On the basis of this combined evidence, the assessment was made that dormice were unlikely to be present along the access route and therefore there was no need to undertake a further detailed survey.<sup>312</sup> There is no contrary survey evidence (from any party) to cast any doubt on this conclusion.

265. As no evidence of dormice was found, SEI (2) therefore concluded that there were no signs of dormice on the sections of potentially suitable habitat, which was to be impacted.

266. In its consultation response of 6th July 2012<sup>313</sup>, no mention is made of dormice by CCW/NRW. There is no criticism of the assessment methodology, which was (after all) in accordance with NE guidance. If the methodology was really considered to be inadequate, it would have been pointed out at that time.<sup>314</sup>

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<sup>310</sup> This issue is addressed fully in the Rebuttal Note on Dormice submitted by MG in November 2013

<sup>311</sup> see SEI(2)

<sup>312</sup> See rebuttal proof of MG

<sup>313</sup> SEI (3) App 2.1

<sup>314</sup> The final access route proposals involve work of a similar magnitude to that assessed in SEI 2 and with which CCW expressed no dissatisfaction.

267. It is in that context that the current concerns of NRW/PCC must be considered.

268. NRW (and CCW before it) has not produced guidance on best practice for dormouse surveys<sup>315</sup>. RES therefore relied on guidance provided in the Dormouse Conservation Handbook which was published by English Nature in 2006 and remains Natural England's publication and advice on the subject. On any rational basis (and contrary to the position of PCC and NRW) this must be considered to be a reasonable survey method (if not the only survey method).

269. The Introduction to the document explains that it is intended to be a practical guide for specialists and its purpose includes providing guidance for developers whose activities may impinge on dormouse habitat (p9).

270. The Handbook explains that the "*best way to establish dormouse presence at a site is to look for gnawed hazel nuts...Although this is obviously impractical where hazel is absent, it is worth searching any adjacent areas with hazel to see if dormice are nearby and thus likely to be present on the site under investigation*" (p 23 para 3.2.2). The Guidance explains that: "*casual searching for nuts is often sufficient*"<sup>316</sup> but a systematic search makes it easier to be confident that an absence of shells is due to absence of animals rather than an accidental failure to find gnawed nuts. Conducting a systematic search involves selecting an area of heavily fruiting hazel and to search 10m x 10m blocks for 20 minutes. This method has an 80% probability of detecting dormice if present. However, as PCC and NRW fail to realise, there was simply not sufficient potentially suitable habitat for this method to be employed.

271. In such circumstances, the Guidance specifically advises that:

*An alternative way of achieving an adequate sampling intensity ... is to collect 100 hazel nuts that have been opened by small rodents (voles and mice...). If this sample contains no nuts that have been*

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<sup>315</sup> see PoE of Elisabeth Halliwell at 5.5

<sup>316</sup> 3.2.2

opened by dormice, it is highly probably [sic] that dormice are not present." (Our emphasis).

272. In the circumstances the dormouse survey was not only an adequate survey methodology but actually the "best way" to establish the presence or absence of dormouse, applying NE guidance.<sup>317</sup>

273. In the light of this Guidance, there can be no doubt that the surveys were undertaken in accordance not only with an appropriate methodology but also using the most appropriate survey methodology.

274. Elisabeth Halliwell makes no mention of the Dormouse Conservation Handbook (second Edition) in her proof of evidence. Rather, NRW refers to an Interim Advice Note from Natural England. This Advice note is "*interim*" only and has not been formally adopted by NE. It has certainly not been adopted by NRW, whose web-site continues to refer readers to the Dormouse Conservation Handbook, as the authoritative guidance on dormouse surveys. Indeed, the Interim Advice note states that: "the advice note should be read in conjunction with the Dormouse Conservation Handbook (second edition), which explains the actual survey techniques employed in more detail."

275. The *interim* guidance clearly does not, therefore, override the *existing* guidance. The Dormouse Conservation Handbook remains authoritative. The surveys are robust and adequate.

276. NRW has raised a concern over specific sections of hedgerow<sup>318</sup>. NRW has not, however, provided any assessment of them or provided any evidence of dormice. At sections 1.8<sup>319</sup>, 1.9 and 1.12<sup>320</sup> NRW consider that the hedges have the potential to be used by dormice. However, at these locations no substantial works are required with the proposal being for the hedges to be trimmed back if necessary. Potential impact on any species is therefore unlikely as the works proposed are minor. Cutting back will not be of much greater impact than the regular annual flailing that already occurs here. Any

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<sup>317</sup> See further section 3.3 of the Handbook and the recommendations in Table 6, which set out the recommended approach for surveys. The RES survey complied with this approach – see the rebuttal note on Dormice submitted by Mick Green at 1.1.27

<sup>318</sup> at 4.4

<sup>319</sup> Drawing D – 003 rev G, CSEI Vol 2c 2013

<sup>320</sup> Drawing D-004 Rev G

works will be carried out using techniques to mitigate any possible impacts. At Sections 1.14<sup>321</sup> and 1.15<sup>322</sup>, it is agreed that these sections are potential dormouse habitat and they have been surveyed. No signs of dormice were found. In addition, the works proposed do not entail the complete loss of these habitats and re-planting of additional hazel is proposed.

277. Whilst there is (now) disagreement over the surveys undertaken (even though CCW never asked for any to be undertaken), a precautionary approach will be taken to the proposed works to hedgerows.<sup>323</sup> If this method (to be secured by condition) is followed, there is no potential for impact to dormice. Accordingly, there is no reasonable likelihood of there being any breach of reg. 41 Habitat Regulations 2010.

278. In all the circumstances, therefore, there is no reasonable evidential basis on which it can be concluded that the ES is inadequate and/or cannot reasonably be considered to be an ES for the purposes of the 2000 Regs.

iv) Bats

279. In its SoC for Session 2, PCC states that it will not lead evidence on *inter alia* bats because NRW will be providing evidence on it.<sup>324</sup> Further, in DW 8<sup>325</sup>, DW defers to NRW on the impact to bats. It is worth, therefore, considering the final position of NRW on whether the assessment is adequate.

280. In the light of the Bat SEI (Oct 2013), Jean Matthews (JM) proof of evidence (for NRW) concluded<sup>326</sup> that insufficient information had been submitted to demonstrate that there will be no likely detriment to the favourable conservation status of bats. However, this position was caveated on the basis that there was no doubt that “the information can be provided to

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<sup>321</sup> Drawing 005 – D, Rev G

<sup>322</sup> Drawing 006, Rev G

<sup>323</sup> This approach is set out in full in the Dormouse Rebuttal at 1.1.38

<sup>324</sup> See 5.4.2

<sup>325</sup> see the version in Rebuttal proof 2

<sup>326</sup> 4.2.26

address NRW's concerns"<sup>327</sup>. The rebuttal proof of Dr Peter Shepherd (PS) therefore sought to address the evidential issues raised by NRW. In the light of that evidence (and discussions between JM and PS), NRW submitted a rebuttal bat proof. In respect of the impact of the access road, NRW concluded:

- (i) The impacts on bat populations would not be significant and could be mitigated (4.1);
- (ii) There are a number of outstanding matters to be resolved by the submission of further information (4.1);
  - (a) Specific details or proposed works and working methods at Gosen Bridge;
  - (b) An agreement between the parties as to the extent of disturbance or damage to trees that may be used by bats for roosting;
- (iii) Additional surveys would be required to inform the proposed works and mitigation in advance of any required licence application (4.2);
- (iv) However, *they do not need to be undertaken prior to the grant of planning permission but rather before the commencement of the development* (4.2);
- (v) Impacts could be acceptably mitigated by timing the works and replacing potential or actual roosting crevices that may be lost, as well as by incorporating additional roosting features into the structure (4.2).

281. Accordingly, NRW's position (in the teeth of the repeated objections by DW) is firmly that the level of assessment in the ES is adequate for the grant of planning permission but that further surveys are required prior to the commencement of development. To be clear, RES has always acknowledged the need for there to be updated bat surveys prior to the commencement of development and so this is not (and never has been) a point of dispute.

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<sup>327</sup> 4.2.26.2

282. Given that PCC defers to NRW on the issue of bats and that NRW is the statutory consultee of the Secretary of State (charged with “policing” compliance with the Habitat Regs for European Protected Species<sup>328</sup>), substantial weight should attach to the agreement between PS and JM. The ES is manifestly adequate for the purposes of the 2000 Regulations and agreed to be so by NRW.
283. DW 8 addresses the issue of bats at 12 locations along the access route.
284. At **Glen Menial Bridge**<sup>329</sup> (Ch 460-590) the underside of the bridge provides no roosting opportunities. The northern arch and parapet wall supports a low roosting potential and the southern arch provides a moderate roosting potential (in the form of cracks and crevices). These have been surveyed by a bat specialist using an endoscope. There can be no question that the bridge has been surveyed and that the assessment is adequate. If necessary, further re-surveys can take place prior to commencement of development, with appropriate mitigation agreed with NRW, such that there will be no impact on bats.
285. At **Diosig Bridge**<sup>330</sup> (Ch 875 – 950), there is no apparent residual concern given the further evidence received from RES.<sup>331</sup> At **Ch1950-2000** DW is concerned that a relevant tree has not been surveyed. The oak on the northern side has low bat potential and the ash on the south side has moderate roosting potential. However, as both trees will be retained, there will be no impact on bats, no further surveys are required and the assessment is adequate. There does not appear to be any residual concern in the final version of DW 8.<sup>332</sup>
286. At **Ch 2800** there is a dispute about the running width. Collett advised that a single tree needs to be removed, however AECOM has confirmed on site that there is not a tree in that location and there appears to be confusion with a telegraph pole (which can be re-aligned without ecological impact). AECOM has confirmed after a re-survey in the light of the evidence of DW that no trees are to be removed at this location and there is no relevant impact

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<sup>328</sup> See *Morge* below

<sup>329</sup> See Rebuttal Proof of Peter Shepherd at 3.14 for further detail on the impact

<sup>330</sup> *Ibid* 3.23

<sup>331</sup> See version of DW 8 in DW Rebuttal 3

<sup>332</sup> See DW Rebuttal 3

on bats in order to achieve a running width of 4.5m. This is not contested by DW<sup>333</sup> but he is concerned that there may be an impact on the stability of two (unidentified trees). Such a mild disagreement about the extent of engineering works required and any potential impact on the stability of tree cannot conceivably be elevated into an issue which supports a conclusion that the ES is inadequate.

287. At **Ch 3875 – 4090** there is a concern about the adequacy of the emergence survey and the adequacy of the assessment of a tree. RES has confirmed<sup>334</sup> that there is a semi-mature ash tree with a rot hole on the main trunk which was specifically surveyed by emergence surveys with no bats recorded. The adequacy of the survey was addressed in the rebuttal to NRW's proof and (in the light of that evidence) NRW (to whom DW defers) has no extant concern (*supra*).

288. At **Gosen Bridge** both NRW and DW raised concerns about the adequacy of the bat survey. This issue is addressed in detail in the rebuttal of Dr Shepherd,<sup>335</sup> which has addressed the points raised by NRW. DW has nonetheless persisted with a number of issues. The arch of the bridge has very few roosting opportunities and is very solidly built with shallow cracks. A preliminary inspection led to the conclusion that further roost emergence and re-entry surveys should be undertaken. These were considered by Dr Shepherd to be appropriate and proportionate to the potential identified during the preliminary survey. Indeed, the emergence surveys were demonstrably adequate as a small pipistrelle roost was identified using the chosen method (undertaken in accordance with the BCT guidelines, which Dr Shepherd co-authored). Observers carrying out the surveys were positioned very close to the arch of the bridge and inspected closely the face and underside of the arch to ascertain where bats were roosting. The roost was a flimsy crevice created by some calcified deposits which were not extensive and (possibly) ephemeral.<sup>336</sup> None of the crevices were found to be deep or substantial (after examination with high powered torches and binoculars).

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<sup>333</sup> See DW 8 in Rebuttal 3

<sup>334</sup> See response to DW 8

<sup>335</sup> At 3.15 *et seq*

<sup>336</sup> The deposits could easily be dislodged

This level of survey work is plainly adequate to support the conclusion that the bridge does not support a significant roost (and NRW agrees). Further, NRW accepts that the widening of Gosen Bridge actually provides an opportunity to build in new roosting structures which will improve the extent and quality of roosting opportunities. On this basis, the assessment is demonstrably adequate.

289. At **Sychtyn Farm** (Ch 5130-5180) the Carnedd Wen ES makes reference to a bat roost. On this basis, DW asserts that a survey should have been undertaken. However, the previous survey identified a single pipistrelle bat entering a farm building in 2006. No buildings will be affected by the development and the additional hedge line in to the Gosen area will actually improve potential bat habitat. No further surveys are therefore required and the assessment cannot conceivably be considered to be inadequate.

290. At **Ch 5430 – 5700** DW raises “uncertainty” about the ability to keep roadside hawthorns. At its highest this concern cannot impugn the adequacy of the ES and yet this is typical of the way in which DW has (without any relevant analysis) elevated a minor discrepancy into a legal objection. In any event, the AECOM re-survey has demonstrated that the hawthorns (which have no bat roost potential) will be retained.

291. At **Dolwen Isaf Bridge**<sup>337</sup>, the underside of the bridge provides no roosting opportunities. Revetment walls and abutment walls provide no roosting opportunities. There are roosting opportunities between the top of the abutments and the underside of the bridge span. These have been inspected by endoscope and no evidence of use by bats has been recorded. However, there remains moderate roosting potential at these locations. There will, therefore, be surveys prior to works commencing and, if necessary, mitigation to address any impact. It should however be noted that the proposed works to the bridge are minor and would not impact on the roost potential of the bats. DW “broadly agrees” with this assessment. NRW

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<sup>337</sup> See Dr Shepherd Rebuttal at 3.14 for detailed consideration of this bridge

considers the assessment to be adequate.<sup>338</sup>

292. At **Dolwen Uchaf**<sup>339</sup> the survey revealed low bat roosting potential but the bridge is not impacted and further surveys are not required. This is not contested in the latest version of DW 8. There is no adequacy point in this location and it is unclear why it was ever raised as an issue (beyond making an arid technical point).

293. At **Site Access 1** the absence of a bat survey is raised. However, the culvert close to entrance 1 comprises two 900 mm concrete circular pipe sections cemented into head walls. The inside of the pipes was inspected and they are in good condition with no cracks or crevice for roosting. No further survey is required and there is no residual adequacy point raised.<sup>340</sup> Likewise, there is no residual issue at **Ch 9680-9840**.

294. In summary, therefore, an incredible amount of detailed environmental information has been requested and supplied in respect of the assessment of bats on the access route. A comparison of the level of formally submitted environmental information with the position in *Tew* could not be more stark. The bat assessment is demonstrably adequate. The Secretary of State cannot rationally conclude that this level of information is inadequate (when that term is properly understood and applied in the correct legal background).

v) *Extent of the Land Take*

295. RES agreed with David Williams (PCC) that the highway works were “technically feasible”. Indeed, this is recorded in the PCC SoC for session 2. So far as RES are concerned, this agreement included the ability to undertake the physical works within the red line. In oral evidence, KM confirmed that AECOM had resurveyed the access route and he was more than satisfied that

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<sup>338</sup> See DW 8 in DW Rebuttal 3

<sup>339</sup> See Dr Shepherd Rebuttal at 3.14 for detailed consideration of this bridge

<sup>340</sup> See final version of DW 8

(i) the extent of the land take was identified on the AECOM drawings and (ii) that the identified works could be undertaken in the red line.

296. A note has been agreed between Kevin Martin (RES) and Matt Russell (PCC) on the area of physical landtake.<sup>341</sup> Both consultants have derived their quantities from the AECOM drawings. There are differences in the quantification but it is agreed that such differences are not “material”.

297. In such circumstances, there is no relevant *ecological* point here. It is yet another arid technical point. DW fails to identify any relevant point of ecological substance arising from any differences in the quantification of the land take. To the extent that it is raised generally to suggest that the ES has underestimated impacts it is firmly rejected. Firstly, RES submit the AECOM figure is accurate. Secondly, for the reasons given in the ES and the evidence, the assessment is accurate. Finally, the assessment is not primarily driven by a detailed consideration of the quantities of land take. Rather, RES has examined the impacts within the red line (so far as relevant) and has presented the results in the environmental information. So, for example, where there is to be an impact on a small group of trees, RES has assessed the impact on the group rather than as a specified number of individual trees. Such an approach is entirely usual and has been questioned by no-one but DW. There is nothing in DW’s criticisms. Once the relevant ecological assessor has understood the impact of the proposal against the group of trees, it does not matter whether the impact is recorded as being against a group (i.e. an unparticularised number) or against a specified number of trees. This is a distinction without a difference and cannot conceivably support the conclusion that the ES is inadequate. Rather, this is precisely the type of “unduly legalistic” analysis which Sullivan J held (expressly) should not succeed.

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<sup>341</sup> [Add reference](#)

iii) Alternative Access and Mitigation

*Legal Background*

298. A number of the issues raised with respect to PCC's proposal for use of a shared access with Carnedd Wen are not limited to consideration of ecological issues and accordingly this issue is discussed more fully later in these submissions.

299. Much of PCC's case on this matter appears to arise from a mistaken application of the provisions of Schedule 9 to the Electricity Act 1989. For the reasons set out later in these submissions the Schedule does not apply directly to RES in any event. However, even if the Schedule is applied it does not require consideration of alternatives to the proposal before the Secretary of State and it does not require an application to be rejected even if it is concluded that there is a less harmful alternative.

300. It is common ground that dormice and bats are European Protected Species (EPS).

301. Article 12(1) of the EC Habitats Directive requires Member States to take requisite measures to establish a system of strict protection of certain animal species prohibiting the deterioration or destruction of breeding sites or resting places. Bats and Dormice are so protected. Article 16 provides that:

- i) if there is no satisfactory alternative; and
- ii) the derogation is not detrimental to the maintenance of the populations of the species at a favourable conservation status in their natural range, then:
- iii) Member States may derogate: "*in the interests of public health and public safety or for other imperative reasons of overriding public interest, including those of a social and economic nature and beneficial consequences of primary importance for the environment*" among other reasons.

302. This directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Reg 9(5) provides that LPA's

must "have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions".

303. The scope of the duty now provided in Reg 9(5) (formerly Reg 3(4)) was established in the case of *R (Morge) v Hampshire CC*<sup>342</sup>. In the Court of Appeal it had been held that in determining a planning application the decision maker had to consider whether the proposal would breach article 12 and if so permission could only be granted if it were thought likely that a derogation would be granted.

304. This approach was rejected in the Supreme Court. In paragraph 29 of his judgment, Lord Brown held:

*"In my judgment this goes too far and puts too great a responsibility on the planning committee [the Secretary of State in this case] whose only obligation under regulation 3(4) is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence of acting contrary to article 12(1), the planning committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a **planning permission** (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) **should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers.**"<sup>343</sup> After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary*

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<sup>342</sup> [2011] UKSC 2 [2011] 1 WLR 268

<sup>343</sup> Emphasis added

*responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty.*

305. The relevant legal background was more recently reviewed in *R (Prideaux) v Buckinghamshire CC and FCC UK Ltd*<sup>344</sup>. Lindblom J held (following the approach of Lord Brown in *Morge*):

*“ 96. As the final decision in **Morge** makes clear, regulation 9(5) does not require a planning authority to carry out the assessment that Natural England has to make when deciding whether there would be a breach of article 12 of the Habitats Directive or whether a derogation from that provision should be permitted and a licence granted. If a proposed development is found acceptable when judged on its planning merits, planning permission for it should normally be given unless in the planning authority's view the proposed development would be likely to offend article 12(1) and unlikely to be licensed under the derogation powers (see paragraph 29 of Lord Brown's judgment in **Morge**).*

*97. The majority of the Supreme Court rejected the kind of assessment favoured by the Court of Appeal, which would require a more penetrating enquiry into the prospects of a licence being granted. In Lord Brown's view, with which Lords Walker and Mance and Baroness Hale all agreed, a planning authority is not expected to supervise the performance by Natural England of its “primary responsibility for ensuring compliance with the Directive”, or to take that responsibility upon itself ...”<sup>345</sup>*

306. Further, Lindblom J held that<sup>346</sup> it is *not* the law that a derogation may only be licensed if there is no alternative. The relevant proviso in article 16(1) Habitats Directive is that there is no “satisfactory alternative”. Accordingly, the Carnedd Wen access can only become relevant if it can be considered to

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<sup>344</sup> [2013] EWHC 1054 (Admin) [2013] Env LR 734

<sup>345</sup> Emphasis added

<sup>346</sup> Para 111

be a *satisfactory* alternative. A number of considerations will be relevant to that judgment. As Lindblom J held:

*“113. As is clear from the European Commission’s guidance, other considerations other than the effects of European Protected Species can and will come into play. **Physical, planning and timing constraints are germane to the question. Any or all of these may prove decisive. To be satisfactory an alternative has to be a real option, not merely a theoretical one.** When planning permission for it would likely be refused because, for instance, it would strain the capacity of local roads, or disturb people in their homes, or mar the setting of a listed building, or harm flora or fauna important in a Site of Special Scientific Interest, it may well be reasonable to dismiss it as a “satisfactory alternative”. Without the planning permission it would require a hypothetical option of that kind would not be a real alternative; it could not meet the identified need.*

*114. Judging what is, or may be, a satisfactory alternative in a particular case requires a focus on what is sought to be achieved through the derogation, and on the likely effects of the works on the species in question...”*

#### *Planning Policy Background*

307. NPS EN 1 addresses the *Appraisal of Sustainability and Habitat Regulations Assessment* and sets out a number of relevant points (relied on by PCC):

- i) The energy NPSs should speed up the transition to a low carbon economy and thus help to realise UK climate change commitments sooner than continuation under the current planning system.
- ii) The energy NPSs are likely to contribute positively towards improving the vitality and competitiveness of the UK energy market by providing greater clarity for developers which should improve the UK’s security of supply.

- iii) The development of new energy infrastructure, at the scale and speed required to meet the current and future need, is likely to have some negative effects on biodiversity, landscape/visual amenity and cultural heritage. In general, it should be possible to mitigate *satisfactorily* the most significant potential negative effects of new energy infrastructure consented in accordance with the energy NPSs.<sup>347</sup>

It is important to note that the policy looks towards *satisfactory mitigation* – it does not require use of alternatives and it accepts that some negative effects are likely.

308. As a general principle, EN 1 states that development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of *reasonable* alternatives.<sup>348</sup> This approach is consistent with the legal approach contained in *Prideaux*. A number of points may be noted –

- i) The policy points towards *mitigation* and consideration of *alternatives*. Plainly it does not seek alternatives in all cases.
- ii) The concern is with avoiding *significant* harm – it does not suggest that all harm must be avoided or that one must take a less harmful alternative if one can be identified.
- iii) It should not suggest, however, that all significant impacts must necessarily be avoided, as EN 1 also provides that where significant harm cannot be avoided, appropriate compensation measures should be sought.<sup>349</sup>

309. In terms of mitigating impacts to biodiversity, EN 1 provides that<sup>350</sup> the applicant should include *appropriate* mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:

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<sup>347</sup> See NPS EN 1 at 1.7.2

<sup>348</sup> 5.3.7

<sup>349</sup> 5.3.7

<sup>350</sup> 5.3.18

- i) during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;
- ii) during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;
- iii) habitats will, where practicable, be restored after construction works have finished; and
- iv) opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.

310. UDP Policy E3 is the development specific policy in the development plan and the most appropriate one against which to consider the proposal. With respect to ecological interests it provides that applications for windfarms will be approved where *“they do not unacceptably adversely affect wildlife habitats or species that are of international, national or local importance in accordance with policies ENV 3-7”*. It can be noted again that the policy is concerned with *unacceptable* adverse impacts i.e. it contemplates that a degree of adverse impact may be acceptable.

311. UDP policy ENV 7 concerns protected species and is only engaged where there is a contravention of the protection afforded to a European protected species. The legal protection afforded by such legislation is set out above and not repeated.

312. In the light of the relevant legal and planning policy background, RES submit that there are 2 issues which require consideration: -

- i) Whether the development would be likely to offend art 12(1) *and* would require licensing (Issue 1); and
- ii) Whether the Carnedd Wen access is a *satisfactory* alternative (Issue 2).

*Issue 1*

313. In respect of Dormice, the development would not be likely to offend art 12(1) because (as set out above) there is no indication that dormice are present along the route of the access road.

314. In respect of bats, RES acknowledges<sup>351</sup> that there is the *potential* for a licence to be required for the works at Gosen Bridge. However, it is simply not possible (at this stage of the development process) to determine with any degree of certainty, whether a licence will be required. Dr Shepherd considers<sup>352</sup> that a number of factors need to be taken into account: (i) the level of use of the bridge by bats *at the time of the works* (to be resolved through re-surveys at the time), (ii) the timing of the works, (iii) the precise nature of the required works, (iv) the manner in which the works are undertaken. These are practical issues because (as stated above) the roost at Gosen Bridge is considered to be small and ephemeral. Dr Shepherd considers that, on the basis of the evidence before him and taking the relevant matters into account, the required works can be undertaken without any contravention of art 12(1) and without a licence. It would, of course, be prudent for the developer to discuss this matter with NRW prior to the commencement of the relevant works.

315. It follows that PCC and NRW's apparent position that a licence would be required is premature. It would appear to be motivated more by a pre-determined desire to force RES to use the Carnedd Wen access rather than a considered analysis of the evidence. This conclusion ignores totally the position that may occur at the time the development commences and, therefore, the factors which may influence the decision at the relevant time.

316. Accordingly, Dr Shepherd is clearly correct in his assertion<sup>353</sup> that the Secretary of State is not currently able to conclude that a licence will be required. Accordingly, applying the relevant legal test (in *Morge*), the Secretary of State cannot conclude that a licence would be required and, therefore, that a licence will be refused. In such circumstances, there is no

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<sup>351</sup> See Dr Shepherd rebuttal proof at 4.1 to 4.3

<sup>352</sup> *ibid*

<sup>353</sup> At the Ecology round table session

requirement to consider the availability of reasonable alternatives and there is no legal and/or planning policy impediment to the grant of planning permission.

*Issue 2*

317. As it cannot be concluded at present that a licence would be required (and there is good evidence that it would not be required) there is no need to go on to consider whether shared access with Carnedd Wen represents a reasonable alternative. However, for the reasons which are discussed below the shared access proposal advanced by PCC is not a satisfactory alternative.

**Socio-economic impacts including tourism – matter 8**

318. There are a number of hidden benefits arising from wind farm development which are often overlooked when considering socio-economic issues. These are considered in the CSEI<sup>354</sup> and include the “hedge” against future fuel cost inflation, the comparative low decommissioning costs, the avoidance of costs associated with pollution and importantly the contribution they make towards addressing the problems created by climate change.

319. Wherever possible RES tries to use local contractors and employees in all aspects of wind farm development. One post has already been created in Wales by the project during its development. At Llanbrynmair a temporary workforce of up to 40 would be created during the 24 month construction stage and it is anticipated that 80% of these construction jobs would be sourced locally. The wind farm would also create a permanent job in operation and maintenance. The proposal would have an indicative capital cost of £100 million and spending of approximately £13 million on works undertaken by local contractors could benefit the local economy<sup>355</sup>.

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<sup>354</sup> See August 2013 CSEI (RES/CD/TOU-001) paras 12.4.4 – 12.4.16

<sup>355</sup> CSEI paras 12.4.25 – 12.4.27

320. The proposal would make a further important local economic contribution in the form of business rates during its lifetime. This could be of the order of £1,575,000 per annum<sup>356</sup>. The proposal is also an important contributor to rural diversification providing a rental income to the host farms and estates<sup>357</sup>. Furthermore the proposal would contribute to a community fund. Whilst the community fund is not relied upon as a material consideration in the determination of the application it does contribute to the socio-economic impacts and consequently it is appropriate to take into account in assessing this topic.

321. Concerns about socio-economic impacts of wind farm development, often related to perceived tourism impacts are commonly raised by objectors. It is notable that despite raising initial concerns<sup>358</sup> PCC has now confirmed that there is insufficient evidence that socio-economic effects are likely to arise of such a magnitude as might justify a refusal of consent for any of these projects<sup>359</sup>. Furthermore no evidence was adduced identifying any adverse socio-economic impacts directly attributable to the Llanbrynmair proposal<sup>360</sup>.

322. The objectors' evidence on socio-economic and tourist impacts relies heavily upon generalised fears as to what may happen and to a lesser extent upon a misunderstanding of the available evidence on this topic. In fact there is no evidence at all from other parts of the country that the presence of wind farms in open countryside, often with at least local landscape designations, has resulted in harm to the tourist industry in the area<sup>361</sup>. Fears are often expressed in surveys about what the inevitable visual impacts associated with wind farms may do to future tourist interest in the area, but such fears have not translated in practice into loss of visitors in the affected areas once the development has been carried out.

323. Studies into tourism numbers and accommodation providers have shown that visitor numbers in these areas have continued to grow and that adverse

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<sup>356</sup> CSEI para 12.4.28

<sup>357</sup> CSEI para 12.4.29

<sup>358</sup> See OBJ-002-OSOC – 2 para 7.7

<sup>359</sup> OBJ-002-SOC-S4 paras 8.1 – 8.3

<sup>360</sup> See RES-TOURISM-POE-STEWART-S4 para 2.1.1

<sup>361</sup> See RES-TOURISM-POE-STEWART-S4 para 3.1

reactions from guests have been negligible<sup>362</sup>. For example, in the most recent statistics published by Visit England for a series of rolling three year averages from 2006 to 2012 in the three Council areas with the highest number of wind farms there has been a continued rise in tourist numbers and spending<sup>363</sup>. A further recent study by Visit Scotland provides similar evidence and their Chief Executive has stated in response to the study that they are both reassured and encouraged by the findings of the survey which suggest that the overwhelming majority of their customers do not feel that wind farms spoil the look of the countryside<sup>364</sup>.

324. The various studies undertaken in the past have been reviewed on a number of occasions and again the outcome of those reviews is that with the exception of a couple of anomalous studies the studies demonstrate that the development of wind farms does not have a harmful socio-economic impact nor does it adversely affect tourism. Serious criticisms can be made about the anomalous studies such that no weight can be given to them<sup>365</sup>.

325. The impact of wind farms upon tourism and other socio-economic impacts are issues considered at a number of wind farm inquiries and the almost universal conclusion in these cases from Inspectors and the various Secretaries of State is that wind farm proposals do not have such adverse socio-economic impacts as would warrant a refusal of permission<sup>366</sup>.

326. In summary the Llanbrynmair would have a range of positive socio-economic impacts. There is no evidence that wind farms have an adverse impact upon tourism or other adverse socio-economic impacts.

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<sup>362</sup> See RES-TOURISM-POE-STEWART-S4 para 3.2

<sup>363</sup> See RES-TOURISM-POE-STEWART-S4 para 3.3 and RES/CD/TOU-016

<sup>364</sup> See RES-TOURISM-POE-STEWART-S4 para 3.5

<sup>365</sup> See RES-TOURISM-POE-STEWART-S4 para 3.5 and RES-TOURISM-REBUTTAL-STEWART-S4

<sup>366</sup> See RES-TOURISM-POE-STEWART-S4 para 5.1 and the various cases in See RES-TOURISM-POE-STEWART-S4 sections 5 and 6

**Impacts on human health – matter 9**

327. There is no evidence that proposals of the nature before this inquiry will give rise to any harmful impact on human health, still less any evidence that the Llanbrynmair proposal would give rise to any such impact.
328. An issue with respect to the impact of infrasound upon human health has often been raised in objection to wind turbines and as often rejected. Dr McKenzie explained that on the basis of a number of studies and reports there is no robust evidence that low frequency noise (including infrasound) or ground-borne vibration from wind farms has adverse health effects on wind farm neighbours<sup>367</sup>. Indeed the levels of such components from wind farms are very low and such sources of noise are ubiquitous and often at higher levels than anything generated from wind farms<sup>368</sup>.
329. This accords with the further guidance on this issue in NPS EN3 paragraph 2.7.60 which concludes that there is no evidence that ground transmitted low frequency noise from wind turbines occurs at a sufficient level to be harmful to human health and therefore it is unlikely that any weight would be given to claims of harm to health arising from grounds transmitted low frequency noise.
330. NPS EN3 also addresses another common source of anxiety that shadow flicker might be harmful to epileptics. Paragraph 2.7.70 explains that shadow flicker frequencies are not within the range which might give rise to symptoms in epileptics.
331. In short there are no reasons for any concern with respect to any possible health impacts arising from this development.

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<sup>367</sup> RES-NOISE-POE-SSA-B para 6.10

<sup>368</sup> RES-NOISE-POE-SSA-B para 6.11

**Impacts on cultural heritage – matter 10**

332. A thorough and up to date assessment of any potential cultural heritage impacts arising from the proposal is set out in the CSEI. This assessment identifies that the proposed development would not result in any residual effects which would be EIA significant and careful management of the decommissioning phase would ensure that no further adverse impacts would occur<sup>369</sup>.
333. Construction works within the wind farm site would damage three undesignated assets, an area of peat cutting, an area of clearance cairns and a single cairn. These are adverse effects of no more than Minor Significance. There are no adverse effects arising from the proposed off-site highway works<sup>370</sup>. Construction works could also damage currently unrecorded sub-surface archaeological features, but this is a potential adverse effect of no more than Moderate Significance and all adverse effects due to construction works would be fully mitigated by an appropriate programme of archaeological excavation and recording<sup>371</sup>.
334. Operation of the wind farm is assessed to have an adverse effect upon the setting of three historic assets. There are a hillfort at Moel Ddolwen (a Schedule Monument), the Church of St Mary, Llan (Listed Grade II\*) and Llan Conservation Area. In each case there is predicted to be an adverse effect of Minor Significance<sup>372</sup>. Any effects would occur for the duration of the operational life of the wind farm but would be fully reversed on decommissioning. Mitigation has been achieved, where possible, through design of the wind farm which minimises the level of harm to the historic assets<sup>373</sup>.
335. There are no issues raised with respect to impact on cultural heritage arising out of the Llanbrynmair proposal.

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<sup>369</sup> RES-CULTHER-POE-SSA-B paras 7.1 & 7.2

<sup>370</sup> RES-CULTHER-POE-SSA-B paras 7.3

<sup>371</sup> RES-CULTHER-POE-SSA-B paras 7.4

<sup>372</sup> RES-CULTHER-POE-SSA-B paras 7.5

<sup>373</sup> RES-CULTHER-POE-SSA-B paras 7.8

### *Aviation impacts – matter 11*

336. There is no objection from any of the relevant aviation bodies and no aviation impact arises with respect to the Llanbrynmair proposal.

### *Hydrology and hydrogeology – matter 12*

337. The main issue raised with respect to this matter has been the hydrological/hydrogeological implications for the peat in the area. In so far as issues arise with respect to peat they are considered under matter 13 below.

338. A thorough assessment of the geological, hydrogeological and hydrological effects of the proposal is set out in the CSEI<sup>374</sup>. This has considered the existing environment, the hydrogeology and hydrology of the area, the presence of designated sites, water quality, water supplies, land uses, and flooding.

339. The assessment identified areas of activity, particularly during the construction operations that have the potential to affect the hydrological and hydrogeological resources of the site<sup>375</sup>. The magnitude and significance of potential effects were assessed covering sedimentation/erosion, pollution and alteration to natural drainage patterns. Best practice techniques will be used and in addition further mitigation measures and management plans will be provided on the basis of detailed site investigations and design through a Construction Method Statement and Construction Environmental Management Plan. With the proposed mitigation and management plans in place any residual effects of the proposal on hydrology and hydrogeology will be negligible or at worst minor/moderate<sup>376</sup>.

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<sup>374</sup> See Sections 8 & 10 addressing both the wind farm site and the access proposals.

<sup>375</sup> CSEI para 8.9.1

<sup>376</sup> CSEI paras 8.9.2-8.9.5

### Peat – matter 13

340. There is a degree of overlap between this matter and the issues considered with respect to matter 7 (ecology) and matters previously covered are not repeated here.
341. A large proportion of the wind farm site is underlain by a relatively thin and discontinuous layer of peat with areas of blanket bog<sup>377</sup>. Afforestation and grazing has resulted in modification and damage to some of the peat habitats on the site<sup>378</sup>.
342. Extensive depth penetration surveys have been undertaken across the site (including access) which include almost 5000 depth penetration probes covering areas of interest identified by NRW and where there are no other absolute constraints<sup>379</sup>. The probing included a 100m grid across the site where there are no other constraints, a probe at the centre and 10m either side of any track and 9 probes per turbine location with one at the centre and four each at a radius of 25 and 50 metres<sup>380</sup>.
343. On the basis of the penetration probes 65% of the infrastructure (244,150m<sup>2</sup>) was estimated to be on peat. The peat depth is less than one metre across 95% of the infrastructure. The peat depth tends to be greatest under mire vegetation or within forestry<sup>381</sup>. However, penetration probing commonly overestimates peat depth as it does not distinguish between overlying peat and underlying glacial clay. Coring work showed that probing overestimated depth of peat in 89% of cases on the site<sup>382</sup>. The coring work demonstrates that peat depths will be shallower than assumed from the probing in many locations across the site. Furthermore the presence of low permeability clay across the site will have positive hydrological implications as there will effectively be no increased drainage of the peat from the

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<sup>377</sup> RES-PEAT-POE-FERRY-SSA-B para 4.3.2

<sup>378</sup> RES-PEAT-POE-FERRY-SSA-B para 4.3.4

<sup>379</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.2

<sup>380</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.3

<sup>381</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.4 4.4.5

<sup>382</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.6 and 2.2.6

underlying layers<sup>383</sup>. The coring also established that the average acrotelm thickness is 0.2m<sup>384</sup>.

344. NRW treat any peat over 0.5m in depth as deep peat. This does not accord with the approach elsewhere and is barely above the minimum depth required to establish peat<sup>385</sup>. This means that the Llanbrynmair proposal has been judged against a very high standard<sup>386</sup>. Based on the surveys undertaken across the site 91% of peat depth across the area of infrastructure is estimated to be below 0.5m in depth. Of the remainder 4% is between 0.5m and 1m and 3% between 1m and 1.5m in depth<sup>387</sup>. It is important to note, however, that the depth of peat is not always related to the quality of the habitat<sup>388</sup>.

345. The construction and operation of the proposal will have two principal effects on the peat environment –

- i) The excavation of up to 120,900m<sup>2</sup> of peat for creation of site access tracks, turbine bases, compounds and other infrastructure, and
- ii) The draining (dewatering) of groundwater from the peat to excavated areas. In some cases this will be a permanent effect equivalent to up to 34,700m<sup>2</sup> of peat as access tracks will remain throughout the operation period, in other cases the effect will be temporary and equivalent to up to 18,900m<sup>2</sup> as excavated areas are backfilled<sup>389</sup>.

It is important to recognise that these calculations do not take into account the likely overestimate of peat depths explained above nor the scope for micro-siting considered below<sup>390</sup>. To put this into context it is also important to note that SSA B is a generally peaty area and a “carbon landscape”<sup>391</sup> with large parts underlain by a combination of deep and shallow peaty soils and

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<sup>383</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.7

<sup>384</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.8

<sup>385</sup> RES-PEAT-POE-FERRY-SSA-B para 2.2.4

<sup>386</sup> RES-PEAT-POE-FERRY-SSA-B para 2.2.5

<sup>387</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.9

<sup>388</sup> RES-PEAT-POE-FERRY-SSA-B para 4.4.10

<sup>389</sup> RES-PEAT-POE-FERRY-SSA-B para 5.1.1

<sup>390</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.13

<sup>391</sup> CD/COM/HYD/08

soils with peaty pockets<sup>392</sup>. It is likely that any wind farm development proposal in SSA B will encounter significant areas of peat soils<sup>393</sup>.

346. Dewatering will at most affect a maximum of 2% of the peat volume and will almost all be within the acrotelm. As the acrotelm is periodically seasonally depleted this will not be linearly related to any habitat loss<sup>394</sup>. Again the estimates are very conservative<sup>395</sup>.

347. Careful consideration has been given to minimising any impacts upon peat. The site was carefully surveyed (taking into account other constraints) to avoid more sensitive areas for peat. The history of the various measures is explained more fully in the CSEI. However, the steps to minimise impact included the removal of a number of turbines to avoid nearby deep peat pockets<sup>396</sup> and careful alignment of the access tracks<sup>397</sup>.

348. As a result of the careful design of the site, only 14 turbines have one or more depth probe reading<sup>398</sup> of greater than 0.5m<sup>399</sup>. Of these 14 turbines 10 can avoid the possible “deep” peat by minor micrositing<sup>400</sup>. Of the remaining 4 turbines micrositing may also be possible to address this but it has not proved possible to investigate the matter further because of existing forestry<sup>401</sup>. Within the limits of other constraints there has been a maximum avoidance and minimisation of “deep” peat consistent with the economic development of the site<sup>402</sup>.

349. A Peat Management Plan has been developed alongside a Habitat Management Plan and these provide for measures to limit and mitigate further any impacts upon peat<sup>403</sup>. All excavated peat can be reused on site in such a way as to retain a significant proportion of the carbon value of the peat

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<sup>392</sup> CD/COM/HYD/09

<sup>393</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.14

<sup>394</sup> RES-PEAT-POE-FERRY-SSA-B para 5.3.6

<sup>395</sup> RES-PEAT-POE-FERRY-SSA-B para 5.3.7

<sup>396</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.6

<sup>397</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.3

<sup>398</sup> (of the 5 readings within or just outside the limits of the footprint of the turbine base )

<sup>399</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.7

<sup>400</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.8

<sup>401</sup> RES-PEAT-POE-FERRY-SSA-B para 5.2.9

<sup>402</sup> RES-PEAT-POE-FERRY-SSA-B 5.2.12

<sup>403</sup> RES-PEAT-POE-FERRY-SSA-B paras 6.1.2 – 6.1.6

and by minimisation of dissolved carbon run-off and creation of new active peat by ditch, furrow and gully blocking, to add to the carbon stocks<sup>404</sup>.

350. At NRW/CCW's request, the proposal has been assessed using the Scottish Government's Carbon Calculator and this has estimated the payback period of the development at Llanbrynmair to be 1.1 years with a range of - 0.1 years to 3.8 years<sup>405</sup>. There are a number of reasons why this again represents a conservative estimate<sup>406</sup> –

- i) Only 45% of the total carbon losses are attributable to on-site ecological carbon stores. The balance would inevitably arise from the provision of infrastructure and backup for the electricity grid which would be inevitable for any wind farm proposal.
- ii) Within the ecological carbon losses 45.6% is attributable to felling existing forestry which again would happen at some point in any event. Also the losses calculated probably overestimate the level of carbon sequestration in the trees.
- iii) Within the ecological carbon losses 47.9% is attributable to losses from peat soils.
- iv) The losses attributable to peat soils are likely to be overestimated because the peat deposit has been overestimated.
- v) The carbon calculator also assumes that 100% of the excavated peat will be lost as atmospheric CO<sub>2</sub> emissions. As all the excavated peat is planned for onsite reuse it is reasonable to expect that a significant proportion of this excavated peat will be re-established and therefore will not be oxidised.

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<sup>404</sup> RES-PEAT-POE-FERRY-SSA-B para 6.1.5

<sup>405</sup> RES-PEAT-POE-FERRY-SSA-B para 7.1.5

<sup>406</sup> RES-PEAT-POE-FERRY-SSA-B paras 7.1.6 to 7.1.16

- vi) The land take envelopes used for the calculation are larger than might actually be required to cover the worst case scenario.
- vii) The carbon losses in drained peat are also likely to be overestimated as the carbon calculator uses a simple diagonal representation of the drainage pattern in soils whereas there is more likely to be a cone of drawdown.
- viii) The carbon calculator could be significantly underestimating the soil carbon gains from restoration.
- ix) The gains estimated from site restoration do not include any additional carbon that may be sequestered as a result of restoring the degraded bog and afforested area.

351. Overall the ecological carbon balance is close to neutral and given the points set out above it is likely that there will be an overall net soil carbon benefit due to the existing degraded nature of the habitat and soils and the large area of proposed restoration of felled forestry and degraded bog<sup>407</sup>.

352. In conclusion, the proposal has adequately minimised loss of peat and peatland habitat impacts consistent with other constraints and the need to provide a viable proposal to meet the important policy needs already identified. The proposal avoids impacts upon the better areas of peat habitat. In addition significant mitigations are proposed for peat including reuse of disturbed peat and enhanced habitat management for peat bog restoration. The mitigation measures proposed would more than compensate for any impact on peat arising from the proposed development and would result in a net positive benefit gain with respect to carbon and peat hydrological conditions when habitat enhancement and peat reuse are taken into account.

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<sup>407</sup> RES-PEAT-POE-FERRY-SSA-B para 7.1.17

**Potential for grid connection – matter 14**

353. RES has an agreement with SP Manweb (the DNO) to connect to their electricity distribution system via a hub-station to be constructed in the location of Cefn Coch from whence a connection is proposed by National Grid to its existing network at Lower Frankton in Shropshire<sup>408</sup>. The potential National Grid connection has generated a considerable degree of adverse comment. Indeed it appears that this is the source of much of the public concern about the individual wind farm proposals. Those grid connection proposals are subject to a separate decision-making process and environmental appraisal. There are no grounds for concluding that they will ultimately prove to be unacceptable.

354. It is furthermore important to keep in mind that the current SP Manweb/National Grid proposals are not the only way in which a connection could be made. The Mott MacDonald report<sup>409</sup> identifies a number of connection options which might be utilised depending upon what proposals were consented and whether any network upgrades were limited to accommodating the consented proposals. It is significant that whilst PCC raises concerns with respect to the National Grid proposal it accepts that an alternative proposal identified in the Mott MacDonald report would be acceptable<sup>410</sup>.

355. The evidence establishes that there are a number of alternative grid connection options and that one can reasonably anticipate that an acceptable option will receive consent

356. A number of objectors have maintained the objection raised at the PIM as to whether there is sufficient information with respect to grid connection to enable the S of S to determine the application and/or whether the ES is adequate in this respect. These matters were addressed in the RES submissions provided prior to the PIM<sup>411</sup>. We refer to and rely upon those

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<sup>408</sup> Section 1 Mott MacDonald report AD-RES-040

<sup>409</sup> AD-RES-040

<sup>410</sup> See OBJ-002-SOC-S4 paras 4.2.3 and 4.2.4

<sup>411</sup> RES/002

submissions rather than repeating all of the details in this closing. For the reasons set out in those submissions the project to be considered in the ES in each case is properly limited to the proposal the subject of the relevant section 36 application. The grid connection does not form part of the proposal. Whilst it may be appropriate to consider the grid connection as an indirect or secondary effect a developer can only be expected and required to provide such information as is reasonably available to them. An appropriate and sufficient assessment of the grid connection was undertaken in the 2010 SEI<sup>412</sup> and the details were subsequently included in the CSEI<sup>413</sup>. Additional information was provided in December 2013<sup>414</sup>. This information provides sufficient information to enable a proper judgment to be made on these matters. It is also all that can practically be expected of or provided by the developer at this time. In the circumstances no more can be provided or required than that which has already been provided. There is no deficiency in the ES. No request for further information has been made under regulation 13 and if, contrary to our submissions, it were considered that any further information were required this is a matter which it remains open to the S of S to address by requesting further information on this issue.

**Compliance with NPS on renewable energy – matter 2**

357. The Llanbrynmair proposal complies with and is strongly supported by NPS EN 1 and NPS EN 3.

358. Reference has already been made under matter 1 above to the recognition within the NPSs of the need for this type of development and the support given for these types of proposals. The Llanbrynmair proposal conforms with and is supported by those general statements.

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<sup>412</sup> AD/RES/008 and 009

<sup>413</sup> AD/RES/031 or CS/RES/BAC/009 Vol II A Appendix 4.4

<sup>414</sup> See AD/RES/040 to 042

359. NPS EN 1 recognises that for a variety of reasons it may not always be appropriate or possible to apply for wind farm development and any necessary grid infrastructure at the same time and that an application for all development at the same time may not be the best course in terms of delivery of a project in a timely fashion<sup>415</sup>. The reasons why it is appropriate to consider the Llanbrynmair proposal separately from any grid application have been explained. The evidence has established that there is no reason why a grid connection would not be possible, which is the relevant test to consider<sup>416</sup>. The proposal accordingly complies with this element of policy.

360. With respect to policy on relevant impacts –

- i) Proper account has been taken of any ecological impacts. The proposal avoids significant harm to biodiversity interests and meets the requirements set out in NPS EN 1 5.3.
- ii) The wind farm layout and construction methods have been designed to minimise impacts upon peat with minimal disruption to ecology and the release of CO<sub>2</sub>. The carbon balance savings of the scheme have been maximised. The proposal accords with the principles set out in NPS EN 3 paragraph 2.7.37.
- iii) Impacts to cultural heritage interests are very limited and comply with the guidance in NPS EN 1 5.8 and NPS EN 3 2.7.41 – 2.7.45
- iv) The wind farm development has been carefully designed to minimise effects on the landscape and visual amenity while meeting technical and operational siting requirements and other constraints. PCC has no objection to the landscape and visual effects of the wind farm proposal but raises concerns instead with respect to the works to the county road to provide access to the site. These matters have been addressed

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<sup>415</sup> NPS EN 1 para 4.9.2

<sup>416</sup> NPS EN 1 para 4.9.1 and 4.9.3

fully above. The proposal accords with NPS EN 3 2.7.48-2.7.51 and NPS EN 1 5.9.

- v) There are no sustainable issues raised with respect to noise and the proposal complies with NPS EN 3 2.7.54 – 2.7.62. and NPS EN 1 5.11.
- vi) There are no issues with respect to shadow flicker. The proposal complies with NPS EN 3 2.7.66 – 2.7.72.
- vii) The traffic and transport impacts of the proposal have been satisfactorily considered and addressed. The proposal complies with NPS EN 3 2.7.76- 2.7.83 and NPS EN 1 5.13.
- viii) There is no good evidence of adverse socio-economic impacts whereas the proposal will provide socio-economic benefits. The proposal complies with NPS EN 1 5.12

361. Careful consideration has been given to the potential impacts arising from this proposal in accordance with the guidance in NPS EN 1 and NPS EN 3. The nature of the objections to the proposal are comparatively limited. In the light of the evidence to the inquiry it can properly be concluded that the proposal complies with policy in the NPSs.

### **Compliance with Welsh government and local planning policy – matter 3**

362. The Llanbrynmair proposal falls within SSA B as defined in PPW and TAN 8 and the revised boundaries defined locally by PCC. The strong support and need for proposals of this nature within those areas was considered above under matter 1. Those policies recognise an imperative to deliver significant quantities of wind energy development within the identified SSA and it is implicit in the policies that a degree of impact is both inevitable and accepted. Given the failure to deliver the identified targets within the time period originally identified and the continuing failure to

deliver significant development within SSA B the proposal derives strong support from these policies.

363. The Powys UDP contains a specific policy E 3 on wind energy development and it is to this policy one should primarily turn to assess the proposal<sup>417</sup>. The policy sets out eight criteria against which to judge proposals of this nature, and it is notable that in most of those criteria the test posed is avoidance of unacceptable harm. This engages the balancing exercise envisaged in PPW in which the wider benefits of a renewable energy proposal have to be weighed against any harm that may be found to arise<sup>418</sup>. However, the policy does not acknowledge the presence of the SSAs and the inevitable need to accept change and impacts that arise from that<sup>419</sup>. When considering the issue of whether an impact is unacceptable it is important to keep in mind the need for significant development within the SSA and the acceptance of the inevitable impacts arising from that development<sup>420</sup>.

364. PCC accepts that the wind farm itself is acceptable in planning terms and satisfies the various criteria set out in policy E 3. The sole remaining issue relates to the access road. The evidence establishes, contrary to PCC's contentions that the impact of the access road is acceptable, particularly in the context of the need for and benefits of the wind farm. There is no requirement in policy to consider any alternatives. The question of PCC's proposed alternative access arrangement is considered below, but even if it were considered (a) that PCC's suggestion is a practical alternative and (b) that it would be preferable to the current access proposals, this would not establish any conflict with the policy. Merely because there may be a better alternative does not render the impacts of the current proposal unacceptable<sup>421</sup>.

365. In the circumstances the proposal complies with the relevant local policies.

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<sup>417</sup> RES-PLANNINGBALANCE-POE-STEWART para 2.2

<sup>418</sup> RES-PLANNINGBALANCE-POE-STEWART para 2.6

<sup>419</sup> RES-PLANNINGBALANCE-POE-STEWART para 4.1

<sup>420</sup> RES-PLANNINGBALANCE-POE-STEWART para 4.2

<sup>421</sup> RES-PLANNINGBALANCE-POE-STEWART para 4.3.2

**Issues with respect to shared access**

366. PCC resists this proposal solely on the basis that access should be achieved through Carnedd Wen. This raises the issue of the approach to take to alternatives.

367. The starting point is that an owner of land is entitled to use land for any purpose which is acceptable for planning purposes. The fact that a landowner wanted to develop his land in a particular way should not be frustrated because there was other land which would be more suitable in planning terms for that particular use<sup>422</sup>. Consideration of alternative sites is only relevant to a planning application in exceptional circumstances<sup>423</sup>.

368. A number of propositions are clearly set out in the authorities –

- i) Objections put forward against a planning application are judged on their merits. If they outweigh the planning benefits of the development applied for, the application will be refused. To introduce into that equation a consideration of a different character, namely whether there would be less disbenefits on another site, could only be justified for some special reason, such as the existence of particularly serious detriments to the public in a case where nevertheless there is a pressing need for the development<sup>424</sup>.
- ii) The comments of Simon Brown J in the *Trusthouse Forte* case are to be read in context – they apply to cases where there are substantial objections which were on the facts made out<sup>425</sup>.
- iii) In those exceptional cases where alternative proposals may be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would

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<sup>422</sup> *Vale of Glamorgan BC v Sec of State for Wales* [1986] JPL 198, 199, *R(Scott Jones) v North Warwickshire BC* [2001] EWCA Civ 315 @ para 29, *Trusthouse Forte Hotels Ltd v SECRETARY OF STATE* (1986) 53 P&CR 293 @299

<sup>423</sup> *North Warwickshire* @para 30

<sup>424</sup> *North Warwickshire* @ para 32

<sup>425</sup> *North Warwickshire* @ para 32

not be relevant or, if they were, should be given little or no weight<sup>426</sup>.

- iv) It would be highly harmful to the efficient and otherwise beneficial working of our system of planning control if decision-makers were required to consider possible alternatives, of which, on the facts before them, there is no likelihood or real possibility of occurrence in the foreseeable future<sup>427</sup>.
- v) Generally speaking the circumstances in which consideration of alternative sites may be relevant arise where the proposed development, though desirable in itself, involves on the site proposed such conspicuous adverse effects that the possibility of an alternative site lacking such drawbacks necessarily itself becomes, in the mind of a reasonable local authority, a relevant planning consideration upon the application in question<sup>428</sup>.
- vi) A further situation where consideration of alternative sites can be relevant is where the development plan or policy guidance makes it relevant<sup>429</sup>.
- vii) There is no general principle that alternative sites need to be or should be considered on wind power applications. In cases involving wind power there are obvious difficulties in considering alternative sites as they will need to be provided in open countryside areas and there will be a need to pursue several projects if the national policy objective is to be realised<sup>430</sup>.
- viii) There is no legal or policy requirement to consider alternatives when considering wind farm proposals. The

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<sup>426</sup> *R(Mount Cook Land Ltd) v Westminster CC* [2003] EWCA Civ 1346 @ para 30

<sup>427</sup> *R(Mount Cook Land Ltd) v Westminster CC* [2003] EWCA Civ 1346 @ para 35

<sup>428</sup> *North Warwickshire* @ para 30

<sup>429</sup> *Philips v First S of S* [2003] EWHC 245 (Admin) @ para 38

<sup>430</sup> *National Wind Power Ltd v SECRETARY OF STATE* Deputy High Court Judge Lockhart-Mummery QC 29<sup>th</sup> October 1999

statutory provisions and policies relating to National Parks and Conservation Areas require special regard to be paid to their protections but they fall short of imposing a positive obligation to consider alternatives which might not have the same effects<sup>431</sup>.

369. The general position is not altered by the provisions of the Electricity Act 1989. The duties set out in paragraph 1(1) of Schedule 9 to the Act apply to licence holders and do not apply to all applicants for consent. In applications where those duties do not apply the Secretary of State is to have regard (under paragraph 1(2)(a)) to the desirability of the matters mentioned in paragraph 1(1)(a) but he should proceed on the basis that the applicant is not under any duty to comply with paragraph 1(1)<sup>432</sup>.

370. It is furthermore important to note what is provided under paragraph 1(1) in any event.

371. Paragraph 1(1)(a) requires *regard* to be had to the *desirability* of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. Similarly paragraph 1(2) requires the Secretary of State to have *regard* to the *desirability* of those matters.

372. Whilst the provisions make it clear that the *desirability* of the specified matters are material considerations to which regard should be had, they do not elevate those considerations above any others or give them greater weight than other considerations<sup>433</sup>. The use of the terms *regard* and *desirability* make it clear that these are matters which have to be weighed in the balance against other relevant matters and that they do not necessarily have to be achieved.

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<sup>431</sup> *Derbyshire Dales DC v SSCLG* [2009] EWHC 1729 (Admin) [2010] 1 P&CR 381 @ paras 35 – 37

<sup>432</sup> *Trump International Golf Club Scotland Ltd v The Scottish Ministers* 2014 SLT 406 @ paras 34 – 36

<sup>433</sup> The provisions can be contrasted with the requirement to have *special regard* under section 66 *Planning (Listed Buildings and Conservation Areas) Act 1990*.

373. Furthermore the requirement in paragraph 1(2) (when it applies) is to do what the relevant person “*reasonably can to mitigate any effect which the proposals would have*” on the matters set out in paragraph 1(2). A number of important points need to be noted –

- i) The requirement is to take such steps as the person *reasonably can*. It is plainly important to consider what the relevant person can reasonably achieve. The requirement is limited to what is reasonably open to the applicant. If the applicant does not have the power to deliver a particular matter it is not something which the applicant can reasonably do. If a particular matter has particularly deleterious impacts upon a proposal it is not reasonable to require it.
- ii) The relevant steps are steps to *mitigate* effects of the *proposal*. Clearly what is under consideration is the *proposal* before the Secretary of State. There is no requirement to consider some alternative proposal.
- iii) The requirement is to *mitigate* effects there is no requirement to avoid effects all together by using some different proposal.

374. There is no additional or separate requirement under the provisions of the Electricity Act 1989 to consider alternatives. The position remains as with planning applications in general.

375. Where issues are raised with respect to the Habitats Directive the Secretary of State is required to have regard to the requirements of the Directive, but he is not under any duty to carry out an assessment as to whether or not any licence will be granted. It is not the law that a licence may only be issued if there is no alternative – the relevant proviso is that there is no *satisfactory alternative*. Issues such as physical, planning and timing constraints are germane to the question and any may prove decisive. To be satisfactory an alternative has to be a real option not merely a theoretical one<sup>434</sup>.

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<sup>434</sup> *R(Prideaux) v Buckinghamshire CC* [2013] EWHC 1054 (Admin) [2013] Env L.R. 734 @ paras 94-96, 111 & 113

376. The Secretary of State's policy with respect to alternatives is set out in NPS EN1. He makes it clear that there is no general requirement to consider alternatives<sup>435</sup>.

377. Specific advice is provided with respect to alternatives in the context of biodiversity<sup>436</sup>, flood risk<sup>437</sup> and landscape and visual impact<sup>438</sup>. The advice with respect to biodiversity does not add materially to the considerations set out in *Prideaux*. Flood risk is plainly not an issue in this case. With respect to landscape and visual impacts the approach to the relevance of alternatives is important. A clear distinction is drawn between development *within* nationally designated landscapes and those which are merely visible from such landscapes. Development in nationally designated landscapes should be exceptional and subject to inter alia assessment of alternatives<sup>439</sup>. There is no such requirement with respect to development outside nationally designated landscapes even if the development is visible from such landscapes<sup>440</sup>.

378. In the exceptional cases where one is required to consider alternatives –

- (i) one needs to consider whether there is a realistic prospect of the alternative delivering the same capacity in the same timescale,
- (ii) an application should not be rejected simply because fewer adverse impacts result from another site,
- (iii) alternatives which are not viable can be ignored,
- (iv) vague or inchoate alternatives can be ignored,
- (v) alternatives should wherever possible be identified before an application is made – where they are put forward after an application is made the onus is on the third party advancing the alternative<sup>441</sup>.

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<sup>435</sup> NPS EN1 para 4.4.1

<sup>436</sup> NPS EN1 5.3

<sup>437</sup> NPS EN1 5.7

<sup>438</sup> NPS EN1 5.9

<sup>439</sup> NPS EN 1 5.9.10

<sup>440</sup> NPS EN 1 5.9.12 – 5.9.17

<sup>441</sup> NPS EN 1 4.4.3

- (vi) amending the design may result in a significant operational constraint or reduction in function. Exceptional benefits may warrant a small reduction in function<sup>442</sup>.

379. The primary policy to consider is that of the Secretary of State. However, it can be noted that PPW does not require use of alternatives. Indeed the emphasis throughout is upon maximising and optimising renewable energy generation<sup>443</sup>. Similarly policy E3 of the UDP refers to proposals not having various unacceptable adverse impacts; there is no requirement to consider alternatives much less to look to preferred approaches.

380. PCC's stance appears to derive from a more general desire for use of shared routes. However, MR agreed in XX that –

- i) No policy requires use of shared routes, there is no suggestion that this arises because this is a strategic area and the policies referred to in paragraph 2.5 of his proof say nothing about use of shared routes.
- ii) This is the case even though PCC did consider what policy response it wished to make to TAN 8.
- iii) There is no requirement that all wind farms be accessed from trunk roads – indeed Carnedd Wen is the only one that is<sup>444</sup>.
- iv) PPW and TAN 8 would anticipate that access is not likely to come from a trunk road and would likely involve widening of local roads. The policy certainly could not have known that sites would be capable of being accessed from trunk roads.
- v) Indeed the creation of additional or new accesses from trunk roads can raise additional issues in itself.
- vi) There is no requirement for wind farms to the east to adopt a common access strategy. PCC is merely proposing this should now be considered<sup>445</sup>.

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<sup>442</sup> NPS EN 1 5.9.21

<sup>443</sup> See for example PPW 12.8.1, 12.8.2, 12.8.8 and 12.8.9

<sup>444</sup> See also OBJ-002-TRANS-POE-RUSSELL-SSA-B para 2.7

<sup>445</sup> See OBJ-002-TRANS-POE-RUSSELL-SSA-B para 2.8

- vii) Access for Tirgwynt involves alterations to 16km of a local road and consent was granted with no details provided. The proposal was considered acceptable with no indication as to the nature of alterations required<sup>446</sup>.
- viii) It is accepted that the proposals are technically feasible (S of C para 5.1.2) and in highway terms a safe route can be provided<sup>447</sup> and therefore there is no need to consider an alternative access for any technical highway reasons.
- ix) No requirement was put by PCC or the highway authority to RES during all these years to adopt a common access strategy.
- x) The matter was not raised in the Cabinet report.
- xi) As a matter of fact RES did consider use of Carnedd Wen for access but rejected it and it was not asked by PCC to explain this prior to June 2013.
- xii) RES also considered a joint approach to use of the local road with 3 other potential developments – whilst none are subject to applications at present they have not been abandoned.
- xiii) RES has been prepared to co-operate with others. It comes to a point when a developer has to progress with a particular proposal. These matters have a significant lead in period and policy makes it clear that it is seeking urgent provision of this form of development.

381. PCC's approach is neither founded in a proper legal approach, nor is it supported by any policy.

382. The proposal in this case involves use of the county road for access to the Llanbrynmair site. RES has sought to provide further information to the Secretary of State given the position adopted by PCC and in order to avoid further delay in this matter given the approach taken by PCC RES has

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<sup>446</sup> See OBJ-002-TRANS-POE-RUSSELL-SSA-B para 2.8 OBJ-002-TRANS-RUSSELL-SSA-B

<sup>447</sup> See OBJ-002-TRANS-POE-RUSSELL-SSA-B para 3.34

incorporated the necessary land to connect with Carnedd Wen. However, the proposal remains to use the county road.

383. For the reasons set out above the impacts arising from use of the county road are not such as to warrant a refusal of consent in this case. There are no grounds for considering any potential alternatives in this case.

384. The argument that it would be preferable to have one shared access rather than two separate accesses does not found a reason for refusing consent or even a requirement to consider alternatives. Furthermore it must be noted that for many years during the consideration of this application there was no suggestion that the preferred approach on the part of the public bodies would be to use Carnedd Wen as the access to the Llanbrynmair site. Applicants cannot reasonably be expected to keep altering their approach as the preference of public bodies alters. In the light of the history of this matter RES was entitled to proceed with use of the county road as the means of access. A late change in preference on the part of the public bodies is no reason for derailing this process. Indeed given the recognition in policy that the need for projects such as this is urgent<sup>448</sup>, and that it will not be possible to develop the necessary amounts of infrastructure without some significant residual adverse impacts<sup>449</sup>, it would be contrary to policy to delay proposals as a result of late changes in approach from public bodies.

385. Even if it were appropriate to consider alternatives it is then necessary to consider whether there is a satisfactory and practical alternative available.

386. Paragraph 1 of Schedule 3 to the Electricity Act 1989 provides power for the Secretary of State to authorise a licence holder compulsorily to acquire any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on. However, no order can be made authorising the compulsory purchase of land belonging to another licence holder except with the consent of the Gas and Electricity Markets Authority, and no such consent shall be given if the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is

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<sup>448</sup> NPS EN1 para 3.4.5

<sup>449</sup> NPS EN1 para 3.2.3

authorised by his licence to carry on or it appears that it will be so used – paragraph 2 of Schedule 3.

387. In practical terms this means that RES (or any other party interested in developing the Llanbrynmair site) has no powers to acquire the necessary land to secure access through Carnedd Wen. Any such access would require the agreement of RWE and the relevant landowners. RES has explained that in 2009 it was effectively told that such an access could not be provided. Despite further considerable efforts made by RES during the course of this inquiry no such agreement has been forthcoming. There is no basis for assuming that this position will change in the future. If agreement has not been possible under the spotlight of the inquiry it cannot be expected to be forthcoming when there is no longer any pressure upon RWE to agree.

388. The position adopted by RWE during the condition session that it has no control over the situation and that any agreement can be reached with the landowners is simply not credible. Taken at face value RWE are suggesting for example that RES could obtain an agreement precluding RWE's use of the access road.

389. Whilst RWE's public position is that it has no objection in principle to use of a shared access it has not in practice been prepared to commit to any such access. Furthermore it has always maintained that any use of the access by Llanbrynmair would have to follow the completion of Carnedd Wen. There is no evidence that any access can be provided through Carnedd Wen in advance of the completion of Carnedd Wen.

390. If a shared access is to be advanced, as PCC and NRW contend, it would be necessary to have provisions in place which requires RWE to co-operate in the provision and use of a shared access. Without effective provisions requiring RWE's co-operation there is at present no available alternative.

391. Furthermore RES has explained that if development of Llanbrynmair were to be delayed waiting for development of Carnedd Wen the project would not be viable. There is no alternative evidence on this point. An alternative which is not viable is not a satisfactory or practical alternative.

392. In addition any further delay in development of Llanbryn-mair entails the significant disbenefit of delaying further the contribution which Llanbryn-mair can make to the much needed additional renewable energy provided by this project
393. It is important to recall that there is an urgent need for the Llanbryn-mair proposal. The urgent need is identified in national policy<sup>450</sup>. It is also clear in the context of the situation in Wales. The delivery of wind farm proposals in the identified SSAs has lagged considerably behind the dates set, with the problem particularly acute in this area. The original date of 2010 has long passed, and it is clear that provision will not be made for the later date of 2015/17. Carnedd Wen has a very long lead in period because of the extensive site clearance and habitat restoration that is required. Llanbryn-mair is a much more straightforward project which can deliver renewable energy much more quickly. It would be contrary to policy to delay delivery of the much needed renewable energy from the Llanbryn-mair site until after the completion of the Carnedd Wen site when there is no need for any such delay.
394. There is also the question of what is to happen if Carnedd Wen were not to proceed for any reason or were to be delayed further. The delivery of the much needed Llanbryn-mair project cannot sensibly be left dependent upon delivery of another project over which it has no control.
395. In practice these various considerations call for suitably drafted conditions which address the various possible factual permutations which cannot be precisely predicted at this stage. In essence when the various matters are considered and weighed in the balance it is necessary to provide for a suitable “fall back” if shared access is not forthcoming within a reasonable period of time.
396. The conditions proposed by PCC do not address these fundamental issues. If an alternative means of access were to be considered further in this case it would be necessary to address these particular issues satisfactorily. In practice the only viable solution would be one which provides the option to

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<sup>450</sup> NPS EN1 para 3.4.5

bring forward development of Llanbrynmair with use of the county road if access through Carnedd Wen is not forthcoming in a timely manner. In addition it would be imperative to have a suitably worded condition imposed upon the Carnedd Wen scheme to ensure that it is brought forward with shared access.

397. Whilst RES does not advance any case that shared access is necessary (for the reasons already given it invites you to conclude that there is no need to consider any alternative access proposal) in order to assist the Secretary of State it has put forward conditions which could potentially address the situation of shared access were the Secretary of State to conclude that it is necessary. In such a situation the Secretary of State would effectively be accepting PCC's case which is that this is a strategic area of search where the question of access should be considered in the context of strategic planning. In that context –

- i) Given that this area has been identified as one where a significant contribution towards renewable energy generation can and should be made, and
- ii) that it is common ground that 30 turbines providing 60-90MW of renewable energy can be acceptably accommodated upon this site, and
- iii) that the only concerns relate to use of the county road for AIL access, but that use of shared access with Carnedd Wen would resolve all of these concerns,

it would plainly be wrong, contrary to the public interest and contrary to good planning for the Llanbrynmair proposal to be sterilised because the necessary access was prevented from coming forward in a timely manner. The use of conditions to require comprehensive development is nothing new and such conditions serve a proper planning purpose.

398. It is furthermore lawful to impose conditions requiring access to be provided over private land. This much is clear from the case of *Hall & Co Ltd*

*v Shoreham-by-Sea UDC*<sup>451</sup>. Whilst it was held in that case that a condition could not be imposed requiring land to be dedicated to public use as a highway, the judges in the Court of Appeal accepted that there was no such objection to a condition requiring a right of access to be given over private land. For example Willmer LJ concluded that merely because a condition might interfere with a landowner's right to prevent other people from passing over his land did not lead to the conclusion that the condition went beyond the powers of the Town and Country Planning Acts given that the whole scheme and purpose of the legislation was to limit the exercise of an owner's property rights and that it forbade the exercise of even more important rights of ownership<sup>452</sup>. Similarly the court rejected the argument that the condition relating to the construction of the ancillary road was not "in connection with the development authorised" on the grounds that when granting a planning permission an authority must necessarily take into consideration the effect of the granting of such permission on the development of adjoining properties<sup>453</sup>.

399. There is accordingly power under the Town and Country Planning legislation to impose conditions requiring provision of a right of access over adjacent private land. There are in addition powers under the Electricity Act to impose such a condition.

400. It can be noted that RWE contested the imposition of a condition on its consent solely on the basis that it was not necessary because the implementation of the Carnedd Wen proposal could not prevent implementation of Llanbrynmair and that this was all simply a matter for negotiation with the relevant landowners. There is no suggestion from RWE that there is no power to impose the type of condition proposed or that it would not be relevant to planning and reasonable, the only issue raised is whether it is necessary. The need for such a condition (if shared access is to be pursued) has been clearly established. Any use of a shared access is critically dependent upon RWE's (or their successors) co-operation both in providing the access route and in co-ordinating use of it. This is a matter

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<sup>451</sup> [1964] 1 WLR 240

<sup>452</sup> See pp247/8 – see also Harman LJ at p256

<sup>453</sup> See Wilmer LJ at p 248 and Harman LJ at p256

which is within RWE's control and to date such co-operation has not been forthcoming. In the absence of an appropriate condition there is no ground for believing that such co-operation might be forthcoming let alone would be forthcoming.

401. If shared access is the route to be followed it is therefore necessary to impose the conditions proposed by RES.

402. In the circumstances, there is no requirement to consider alternative access in this case. Given that the proposal is in an area identified for this form of development and that the development of a 30 turbine wind farm is acceptable it would not be appropriate to prevent this development proceeding merely because of a preference for use of an alternative access route, or simply because it would result in less impact. If, however, the use of the alternative of shared access is to be pursued it would be necessary to impose the conditions proposed by RES including a condition upon any Carnedd Wen consent.

### **Conclusion**

403. The proposal has been extensively tested at this inquiry. The need for the proposal and the benefits flowing from it are clearly established. The proposal is an important step in addressing the pressing needs with respect to climate change and energy security; it makes an important contribution towards meeting the Government's international commitments and energy policy goals and helping to address the chronic failure to make the planned provision for wind energy development in this sub-region.

404. This proposal does not give rise to any unacceptable impacts. Indeed for its scale it gives rise to remarkably little impact. This reflects the fact that it is located in an area repeatedly identified as a location to which this form of development should be directed and concentrated. Such impacts as arise can be properly addressed by conditions. If it were concluded that the proposal

has any adverse impacts they are clearly outweighed by the benefits of this proposal.

405. We would invite you to recommend to the Secretary of State that the consent should be granted subject to appropriate conditions.

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28<sup>th</sup> May 2014  
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