

## **MID-WALES WIND FARM INQUIRY**

**APPLICATION BY RWE INNOGY UK LIMITED FOR CONSENT UNDER SECTION  
36 ELECTRICITY ACT 1989 AND A DIRECTION FOR DEEMED PLANNING  
PERMISSION UNDER SECTION 90(2) TOWN & COUNTRY PLANNING ACT  
1990 FOR CARNEDD WEN WIND FARM AND HABITAT RESTORATION  
PROJECT ON LAND AT CARNEDD WEN POWYS**

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**CLOSING SUBMISSIONS ON BEHALF OF THE APPLICANT**

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**Marcus Trinick QC  
Eversheds LLP  
29 May 2014**

## OVERVIEW

1. Carnedd Wen is a remarkable scheme. Imaginative in concept, it achieves a number of key policy objectives of relevance to sustainable development: the generation of renewable electricity, the landscape improvement of a large area of currently afforested land and biodiversity gains of national significance.
2. Of course Carnedd Wen, like any very large infrastructure development, has impacts to which objections have been made, but in approaching my submissions I ask that you bear in mind a number of headline points.
  - 2.1 In 2012 Powys County Council (PCC) objected to the Carnedd Wen project (from now on in most places 'Carnedd Wen') for nine reasons relating to nature conservation, transport, landscape, socio-economic matters, and consequent contended breaches of policy. However, starting as long ago as the receipt of the first consultation responses to Carnedd Wen from bodies such as CCW, Forestry Commission Wales and Snowdonia National Park Authority, RWE has assiduously and systematically addressed concerns about the project. Since the resolution of PCC in 2012 that process has accelerated. As a result this very large project now has outstanding objections from consultees in relation only to the landscape and visual effects of the development. The objections from NRW and SNPA are to the whole of the project. Their focus is the Snowdonia National Park. The nine objections of PCC have been reduced to a single outstanding objection to 5 of the proposed 50 wind turbines.
  - 2.2 You will have seen from the evidence of Mr Stevenson, Mr Atkinson, Mr Cradick and a group of five witnesses brought together to discuss peat, hydrology, forestry and ecology just how much work RWE has put into refining Carnedd Wen into a project which now has so few objections. You will no doubt have noted from SEI 2013<sup>1</sup> that a very detailed level of understanding of the environmental consequences of the project has been achieved, perhaps well beyond that normal for a project in its planning stages. This development has been very carefully prepared and refined, based indeed on the experience of RWE in developing numerous wind energy projects in Wales, England and Scotland, in particular in upland landscapes.
  - 2.3 Carnedd Wen will generate a substantial inward investment into Powys and, more widely, Wales. Access to the countryside will be further encouraged and enhanced through the proposed public access strategy. And there will be indirect social benefits from these environmental

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<sup>1</sup> AD/RWE/026 to AD/RWE/030

improvements, economic advantages and additional opportunities for recreation.

- 2.4 That RWE has been able to bring before you a scheme with so few objections and with so many advantages reflects its location. The Carnedd Wen plateau is very extensive and it is sparsely populated. It is currently dominated by long established commercial forestry, and there are few or no nature conservation, cultural heritage, aviation or telecommunications constraints. The site can be accessed direct from the A458 trunk road, utilising an existing forestry access which it is clear has proved to be an attractive feature of the development from the perspective of PCC. The site is close to the boundary of the National Park, but it must be remembered that the process of SSA selection, cumulating in TAN 8<sup>2</sup>, explicitly took the presence of National Parks into account. While it may be that limited weight can be given to the 2006<sup>3</sup> and 2008<sup>4</sup> Arup refinement studies based on TAN 8 it may be noted that these studies recommended that the area of Carnedd Wen should remain a zone for large scale wind farm development, except for the area of five proposed turbines, which are nonetheless within 5km of the SSA boundary. Indeed the virtues of Carnedd Wen were reaffirmed as recently as 2012 in the study carried out by Aecom for PCC.<sup>5</sup>
3. Another topic that I will visit in a little detail is the potential for Carnedd Wen (and indeed Llanbrynmair) to be connected to the grid. It became clear in Session 4 that SSA Area B can be connected to the grid on heavy duty wooden poles running direct to England, if need be. The grid requirements of Area B do not include a new 400kV overhead line. Such a requirement only arises if more than a certain amount of development in SSA Area C is also to be implemented.
4. I will turn shortly to the matters on which the Secretary of State notified in his Rule 4 statement that he wished to be informed. I note at the outset that I will focus principally on matters which I believe will materially influence the outcome of the inquiry. My focus will therefore be on:
- (a) The landscape and visual effects of Carnedd Wen Wind Farm on the National Park and the issue of the "Carnedd Wen Five"; and

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<sup>2</sup> CD-COM-016

<sup>3</sup> CD-COM-017

<sup>4</sup> CD-COM-018

<sup>5</sup> CD-RWE-PLA-001

- (b) The landscape and biodiversity benefits of the Habitat Restoration and Management Plan (from now on the HRMP), and the other benefits of the development to which I have already alluded.
5. I have not said that I will focus particularly on Matter 5 (transport) because I believe that the continuing objections of the Alliance attract little weight given the agreement that has been reached between RWE and the Welsh Government and PCC as the relevant highway authorities. You have been presented with an acceptable package of delivery measures for both abnormal invisible loads (AILs) and other construction traffic. Again, Carnedd Wen presents no challenges for the decision maker in relation to any of the other matters on which you must inform the Secretary of State.
6. In summary I believe that in drawing the planning balance for Carnedd Wen the principal focus should be on the issues canvassed in paragraph 4. In saying this I do not belittle the evidence of the Alliance. I say now that RWE has had enormous respect for the professionalism, evidence and civilised engagement of members of the Alliance. That has been constantly remarked within the RWE inquiry team. It is a shame that we remain in opposition to such an able group of people. Nor does RWE underestimate the extent to which the lives of those in the Alliance have been taken over by this inquiry, and the extent to which other matters may have been put on hold until the end of the inquiry. However, I think that it is worth noting that, at least in the view of RWE, much of the opposition, or at least the vehemence of the opposition, has derived from the failure of those promoting grid connections to communicate that the 400kV overhead line is not in all circumstances necessary. While objection would no doubt have always been taken to the proposed wind energy developments it has seemed to me for some months that the intensity of the opposition has to a material degree been informed by apprehension about the nature of the proposed grid connection, as communicated by the grid bodies. That is a pity.
7. In summary in relation to the position of the Alliance I would not wish them to think that, in the concentration that there will be in these submissions on the views of statutory bodies, their evidence is in any way to be ignored. I will deal with it explicitly at appropriate points.

8. My final introductory comment is that these closing submissions are to a considerable extent the joint product of the work of Karl Cradick and me. I strongly commend Mr Cradick's closing session Hearing Statement which was deliberately written in the form of a closing submission. Therefore I have without shame incorporated many passages within it into these submissions. I now turn to the Secretary of States' Rule 4 matters.

#### **MATTER 4**

***"The individual and combined landscape and visual impact of the proposed developments taking into account the proximity to Snowdonia National Park (Strategic Search Area B); and cumulative impact with other wind farms in the Powys area which have already been granted planning permission or where planning permission has been applied for."***

9. Since this is the primary issue for Carnedd Wen I have given the topic detailed consideration. In posting my submissions I first describe the common ground that has been achieved between RWE and other parties. I then set out my view of the conclusions that can be drawn from the evidence, dealing in turn with some observations on the evidence on behalf of NRW and then turning to look at distinct landscape and visual, recreational, National Park and access road issues. I then look at planning conditions and planning policy compliance before turning finally to some concluding thoughts on the National Park and on the five turbines objected to by PCC.

#### **Common Ground**

10. Through a process of dialogue and project refinement substantial common ground has been agreed about the landscape and visual effects of the project.
- 10.1 RWE has agreed statements of common ground (SoCGs) in relation to landscape and visual matters with Powys County Council<sup>6</sup> (PCC) and Natural Resources Wales<sup>7</sup> (NRW). Extensive agreement was secured on the methodology for landscape and visual impact assessment (LVIA) and on the matters on which the focus of the inquiry was required.

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<sup>6</sup> RWE-PCC-SOCG-LAND-SSA-B

<sup>7</sup> RWE-NRW-SOCG-LAND-SSA-B

- 10.2 All three parties are in agreement that the environmental information submitted with RWE's application and subsequent SEI submissions provide an adequate basis for the assessment of the landscape and visual effects of the proposal. It is accepted that that the identified Zones of Theoretical Visibility (ZTV) offer a fair and reasonable representation of the theoretical maximum potential visibility of the wind turbines in the wider landscape.
- 10.3 In the SoCG between RWE and Powys CC it is stated that the Council considers that the five north-eastern wind turbines (R23, R26, R28, R29 and R30) are unacceptable in landscape and visual terms and that these lie outside of the Arup 2008 refined boundary of SSA-B. However, Powys CC takes no objection to the individual or cumulative landscape and visual impacts of the remainder of the scheme (para. 5). Powys CC accepts (para 8) that the effects with respect to Snowdonia National Park have been satisfactorily addressed, having regard to Powys UDP<sup>8</sup> policy ENV2: *Safeguarding the landscape*. In paras. 12 and 13 it is confirmed that residential amenity and historic landscapes are not matters that form a part of the Council's case in respect of Carnedd Wen.
- 10.4 With respect to the proposed site access from the A458, it is agreed in the SoCG between RWE and Powys CC that *'the Carnedd Wen access proposal is acceptable in landscape and visual terms'* (para 6). The SoCG between RWE and NRW states that *'... it is accepted by NRW that [the Applicant] is able to provide a satisfactory commitment to the maintenance of the forestry blocks ... such that NRW is satisfied that the landscape and visual effects of access works would be acceptable through the life of the development'*.
- 10.5 Following clarification given during the examination of evidence presented by NRW's landscape witness Mr John Champion it is understood that NRW is not maintaining its objection to the vehicular access from the A458, subject to the maintenance of a tree screen along the north-western side of the track.

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<sup>8</sup> CD-CON—003-PLA-013

## Conclusions From The Evidence

### Overview

11. Detailed evidence on the landscape and visual effects of the proposed Carnedd Wen has been presented by Mr Jeffrey Stevenson. Mr Stevenson was the author of the chapters dealing with landscape and visual effects set out in the Environmental Statement (2008) and the SEIs of 2009, 2011 and 2013. He played a significant role in the refinement of the wind farm design and habitat restoration proposals. Given Mr Stevenson's deep involvement in and understanding of the project from its earliest stages, added weight should be given to the conclusions he draws. Responding to para. 3.3 of the closing submissions made on behalf of NRW, I am unhappy with the contention that Mr Stevenson is in any way predisposed to view landscape and visual changes positively.
12. In para. 70 of the PCC closing submissions, it is said that a number of applicants flirted with the 'anything goes' approach to wind farm development on the basis of the advice in Annex D to TAN8, which recognises an implicit objective to accept landscape change in SSAs. If that accusation was aimed at Mr Stevenson, it would be unfair and wrong for reasons given in the following paragraphs.
13. Mr Stevenson made clear that project evolution has had regard to landscape character and capacity along with consideration of potential visual interactions with high sensitivity observers, notably within the Snowdonia National Park and on major routes to and from the Park. From the outset RWE sought a development layout founded on the principles of avoidance, minimisation and mitigation of potentially significant adverse effects. By these means harm to on-site landscape features was avoided and the substantial potential for landscape enhancement, through the removal of regimented forest plantations and subsequent habitat restoration, was identified. In cross examination Mr Campion confirmed that no point was taken by NRW concerning the design and layout of the wind farm, so that the advice in para 2.7.49 of National Policy Statement EN-3<sup>9</sup> was satisfied (see also his proof at 3.14<sup>10</sup>).

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<sup>9</sup> CD-COM-002

<sup>10</sup> RWE-LAND-POE-STEVENSON-SSA-B

14. For want of a better place to insert a stray point arising from Mr Champion's evidence, I deal with it here. In 5.31 of his proof<sup>11</sup>, he deployed the concept of blade swept area as some kind of metaphor for visual effects on the wind farm. In XX I believe that it became tolerably clear that due to the real life intervention of such factors as topography, distance and wind direction, any use of blade swept area in visual impact assessment is of little or no use, and indeed I was rather surprised to see this concept in Mr Champion's evidence.
15. Before addressing the points in relation to landscape and visual effects, one or two points in the evidence of Mr Champion should be noted as I believe they should go to the weight that you give to what he had to say:
- at 5.38 of his proof, Mr Champion presented his views on landscape and visual sensitivity. He acknowledged in XX that he was dealing with the baseline sensitivity of the area, not its sensitivity to the development proposed, as he should have done;
  - in para 5.38 of his proof, Mr Champion took the curious step of conflating landscape and visual sensitivity (both baseline, but that is a separate point). As I put to him in XX this is a completely incorrect approach in terms of the clear advice in the Guidelines for Landscape and Visual Impact Assessment to keep landscape sensitivity and visual sensitivity separate<sup>12</sup>;
  - in 5.42 of his proof, Mr Champion again departed from well established practice (followed by Mr Stevenson) in conducting what I put to him in XX was a crude mathematical averaging exercise in order to arrive at a view on landscape capacity. Mr Champion acknowledged that he had provided averages for landscape and visual sensitivity. This again is unhelpful to you in evaluating (separately) the sensitivity of the landscape and of the area's visual amenity to the development proposed;
  - in paras 5.33-5.43 of his proof, Mr Champion addressed landscape capacity. You will remember that I asked him some questions about this material. In closing I do not need to rehearse the complexities of the relationships which exist

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<sup>11</sup> CON-003-LAND-POE-CAMPION-SSA-B-CW

<sup>12</sup> CPL-LAN-005

between the landscape character sensitivity, visual sensitivity, value and landscape capacity. It is sufficient for me to commend TAN 8 as the product of a landscape capacity study which determined the best way of achieving a quantified amount of on-shore wind energy (the capacity target)<sup>13</sup>. TAN 8, the ARUP requirement studies<sup>14</sup> and the 2012 AECOM study<sup>15</sup> carried out for PCC have all confirmed that (a) the area including Carnedd Wen is the best to provide large scale wind energy development and (b) the site of Carnedd Wen is, within SSA Area B, a specific tract of land suitable for larger scale wind energy development. It may be remembered that none of the documents I have canvassed took into account the potential for a habitat restoration and management project.

16. Mr Champion's attempts to derive a conclusion of medium-low landscape capacity for the Carnedd Wen development are internally flawed (see my comments above about conflation of landscape and visual amenity and the use of baseline sensitivity) and also fail to grapple with TAN 8 and succeeding documents. Indeed, the approach of NRW and Carnedd Wen seems to be on the basis that SSA Area B does not exist, so that it is appropriate to evaluate the development outside the context of the capacity studies completed for the Welsh Government and others. This does seem an extraordinary position for a statutory advisor to the Welsh Government to take. Indeed, you may feel as RWE does, that it is really quite inappropriate for NRW to take such an extreme position.
17. Perhaps of more importance is the complete failure of both of NRW's relevant witnesses (Mr Champion and Mr Minto) to recognise the fact of and benefits of the habitat restoration and management project. This topic entirely escaped attention in the evidence of Mr Champion, as he recognised in XX. It entirely escaped attention in the evidence of Mr Minto. You may feel that NRW has fallen very short here in a proper appreciation of the scope of the project advanced by RWE and its apparent unwillingness to treat Carnedd Wen as any more than just another wind farm project. This point was discussed in the closing hearing session in the context of Mr Minto's evidence. As far as Mr Champion's evidence is concerned you may find the point conveniently

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<sup>13</sup> CD-COM-016

<sup>14</sup> CD-COM-017 & CD-COM-018

<sup>15</sup> CD-RWE-PLA-001

highlighted in paragraph 3.4 of his proof where he boldly states that the design of the proposed wind farm “has not demonstrated there is any landscape contribution to the enhancement of the quality of the area..”. It really would appear that Mr Campion has focused only on the wind turbines, a significant drawback in terms of evaluating the impact of the development as a whole in (particularly) a National Park context.

18. Finally, on design and mitigation matters, in response to earlier concerns expressed by CCW concerning the visual presence of the proposals when seen from the lower valleys in the National Park, and from the main roads into and out of the Park, RWE reduced the wind farm from 65 to 50 turbines (as assessed in the 2011 SEI<sup>16</sup>).
19. The landscape of the plateau itself would become open and more diverse in character as a consequence of forest removal. In evidence concerning landscape character and visual and sensory LANDMAP criteria Mr Stevenson has demonstrated that nothing of *High* or *Outstanding* LANDMAP value (in terms of individual criteria – Scenic Quality, Integrity, Character, Rarity or Overall Evaluation) would be significantly affected save for part of the Llanerfyl Mosaic Farmlands to the east/north-east. The host LANDMAP units (Unit 320 - Banwy Forest and Unit 571 - Pencoed) are respectively of *Low and Moderate* value. Direct significant landscape effects would be contained wholly within these landscape units.
20. Mr Stevenson concluded that the wind farm’s significant landscape character effects would be contained almost completely within the TAN 8 boundary (see JSA session 2 Proof Appendix 14 Figure 14a<sup>17</sup>). The assessments of visual effects included in the 2008 ES and all subsequent SEI have found consistently that significant visual effects arising from Carnedd Wen wind farm would arise for a potential distance of up to c. 5-7 km from the nearest turbines depending on the location of the observer and, from some elevated viewpoints, for up to c.8.5-10.5 km from the turbines. Users of the A458, which is used by visitors *en route* to the National Park as well as by more local traffic, would only see the wind turbines for a limited stretch of their journey.
21. Subjective individual responses to the sight of a wind farm will vary. Nonetheless, the removal of plantation woodland and the restoration of peat habitat would provide walkers on Glyndŵr's Way with new views

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<sup>16</sup> AD-RWE-013 TO AD-RWE-018

<sup>17</sup> RWE-LAND-POE-APP-STEVENSON-SSA-B

towards the uplands on the southern side of Snowdonia National Park and an opportunity to appreciate upland peat landscapes at close quarters. Appendix 28 of Mr Stevenson’s evidence to session 2 of the current inquiry identifies opportunities for enhanced permissive access to the site. One of the submitted conditions addresses this opportunity by requiring the approval and implementation of a Rights of Way Management Plan. Responding to para. 3.8 of the closing submissions made on behalf of NRW, Mr Stevenson might well have confirmed that the delivery of public access is not yet detailed. But that is an unfair criticism: the details will emerge in the Plan to be submitted for approval.

22. In XX Mr Campion, by reference to his para 3.14, acknowledged that some walkers would, taking into account the wind farm, appreciate the benefits achieved by the removal of forestry, whilst some would not. That is a perfectly fair appreciation, but it must be remembered that the benefits of the removal of forestry will subsist beyond the decommissioning of the wind farm, and will be managed for a total of 50 years from the commencement of development. Thus in closing I advance the benefits of forestry removal for recreational users as a benefit of the project of some significance. Indeed (see section 2.5 (Public Rights of Way) in SEI 2011<sup>18</sup>) PCC has for some time recognised this benefit.
23. As recorded in paragraph 2.4 the presence of National Parks was taken into account explicitly in the designation of the TAN 8 SSAs. In evidence Mr Stevenson acknowledged that it is inevitable that the visual effects of large scale commercial wind energy development in the TAN 8 SSA B area will extend into parts of the south-eastern portion of the Snowdonia National Park and that some of the visual effects will be significant, individually and cumulatively – albeit diminishing in significance with distance. However, he does not consider that there would be a material adverse effect on any of the National Park’s Special Qualities as defined in the Snowdonia National Park Management Plan 2010-2015<sup>19</sup>, including Special Quality 5 - *‘the opportunity for people to understand and enjoy the National Park actively, whilst maintaining areas of tranquillity and solitude, thus promoting aspects of health, well-being and personal reflection’* – which received close attention in evidence.

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<sup>18</sup> AD-RWE-013 TO AD-RWE-018

<sup>19</sup> CD-COM-PLA-01

24. Mr Stevenson and Mr Campion disagree concerning whether or not there would be significant landscape character effects arising within the National Park as a result of the wind turbines. You must form your own view, but I would ask you to accept the evidence of Mr Stevenson that (see para **20** above) significant landscape effects will be contained almost completely within the TAN 8 boundary and will not extend into the National Park.
25. NRW through Mr Campion take the view that Special Qualities 1 and 6 will be adversely affected by the wind turbines (see para 5.20 of Mr Campion's proof notes) in addition to Special Quality 5 discussed in para **23** above). You may remember that I cross-examined Mr Campion on Special Qualities 1 and 6, and I ask you to accept the view of RWE that neither has the potential to be adversely impacted by the proposed wind turbines. Special Quality 1 is concerned with the diversity of landscape within the National Park and could not possibly be affected. With regard to Special Quality 6 nothing which is proposed within the current wind development could affect "Extensive opportunities for recreation..." within the National Park. If there is any issue relating to Special Qualities, it relates to Special Quality 5 on which I have already submitted.
26. On the assumption that 'harm' is deemed to arise from the wind farm's presence Mr Stevenson has set out in evidence a series of points to which recognition must be given, leading to the conclusion that the proposed Carnedd Wen wind farm and habitat restoration project would, on balance, provide substantial benefits to the interests of the National Park (Stevenson evidence for session 2<sup>20</sup>). Even if visual effects were considered significantly adverse, he considers that in the longer term the net effect would be substantial, positive and worthwhile and would not prove offensive to the statutory purposes of National Park designation during either the operational stage or emphatically after the decommissioning of the wind farm, noting that the habitat restoration project will be for a period of 50 years.
27. Mr Stevenson concludes that the vast majority of the National Park would not be affected by the presence of Carnedd Wen. The area of the Park into which significant effects might extend does not appear to be much visited. Finally, he does not consider that opportunities to seek solitude

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<sup>20</sup> RWE-LAND-POE-STEVENSON-SSA-B

and/or tranquillity would be much diminished – even if seeking solitude or tranquillity is dependent on not seeing a wind farm.

28. Mr Stevenson’s conclusions are consistent with those of PCC’s independent landscape consultant Capita Symonds<sup>21</sup>. Capita Symonds provided PCC with a review of RWE’s landscape and visual impact assessment for the original 65 turbine project in August 2009. In this original report, Capita Symonds expressed concern at the effects of the wind farm on the landscape character and visual amenity of Snowdonia National Park.

29. The applicant’s revised proposal (see RWE’s 2011 SEI<sup>22</sup>), in which the number of wind turbines was reduced from 65 to 50, the total length of new access tracks was reduced from 29.7 km to 16.6 km and the numbers of borrow pits anemometry masts and substations also fell, responded in part to Capita Symonds’ concerns. Powys CC instructed Capita Symonds to review the revised proposal. Capita Symonds affirmed that the revised layout substantially addressed many of its concerns, particularly with respect to the effects on Snowdonia National Park. Whereas the wind farm would continue to be visible from more elevated areas of the National Park at greater range, Capita Symonds noted that:

*‘The revised proposals have excluded turbines from the north-western corner of the site and this change will reduce or eliminate effects on areas to the north around to the west, particularly in the lower parts of the landscape within the National Park and along the A458 corridor’ (CD/RWE/LAN/03 page 1).*

30. The full conclusion of Capita Symonds’ report on the revised proposals were as follows.

*‘The revisions address many of the original concerns, particularly in relation to effects on sensitive areas to the north and to the west. Residual effects will remain, particularly with regard to elevated areas in the National Park and the Berwyn Hills, although, in our opinion, these effects will be consistent with those anticipated in relation to the implementation of TAN 8 policy.*

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<sup>21</sup> CD-RWE-LAN-03

<sup>22</sup> AD-RWE-013 TO AD-RWE-018

*'The revisions will not benefit visual effects on residents within Llanbrynmair or significantly at Llangadfan. However, at both locations effects will be seen cumulatively, with Llanbrynmair to the fore at the former, and Mynydd Waun Fawr and, potentially, Dyfnant Forest at the latter. These effects are acknowledged within the assessment.*

*'The assessment also considers effects in relation to the access track and effects at the entrance off the A458. The track is unlikely to have any significant effects and the extent of the cutting is far removed in extent from the indications provided in the original report.*

*'Overall, in its current form and taking account of the overall effect likely to occur as a consequence of TAN 8, in our opinion, this development is acceptable in Landscape and Visual terms' (CD/RWE/LAN/03 pp2-3).*

31. Capita Symonds' conclusion was reflected in the planning officer's report on the Carnedd Wen project to PCC's cabinet on 13 March 2013<sup>23</sup>. In paragraph 45.14, at the end of the landscape and visual section of the report, it was concluded that:

*The revision therefore substantially minimises the impacts of the development upon National Park and wider landscapes with residual effects consistent with those that can be anticipated from the implementation of planning guidance based on TAN 8 (Planning Policy Wales February 2011). The proposal would also be consistent with the requirements of Powys UDP Policy ENV2 in that the revisions contained within the SEI have satisfactorily taken into account the visual quality and sensitivity of the landscape, particularly in respect of the National Park where landscape and visual impacts have been substantially reduced (CD/RWE/LAN/02, p.53).*

32. I return to matters relating to Snowdonia National Park after considering policy. At that stage I also deal with the five turbines to which PCC objects.

#### *The Access Road*

33. Here I deal with the access road from the junction with the A458 to the Carnedd Wen plateau. You will remember that there was considerable discussion in XX of Mr Campion about NRW's then outstanding concerns

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<sup>23</sup> CD-RWE-LAN-02

relating to the visual impact of this existing forestry track (and the vehicles using that track) when viewed from the National Park.

34. RWE attempted to engage with NRW over a long period on this issue. I refer to what Mr Stevenson had to say in evidence in chief concerning correspondence with NRW in the months leading up to the inquiry (see for example Savills' correspondence at Mr Stevenson's Appendix 21<sup>24</sup>). The position with regard to the screening of the access road has been clear and available to NRW since SEI 2011, a document over which we trawled in XX of Mr Campion.
35. It is now clear that NRW does not object to the limited improvements there will need to be to the access track, nor to the use of the track for construction vehicles, subject to the maintenance of tree screening. It may be noted that if Carnedd Wen does not receive consent (and the access track is not used for the purposes of another wind farm with its own requirement to maintain tree screening) NRW will have no control over the long-term maintenance of these trees. They may be felled or might otherwise disappear. Therefore, the agreement by RWE to maintain tree screening for the lifetime of the development may be seen as a benefit of the project.
36. During session 4 of the inquiry Mr Stevenson presented evidence concerning the cumulative landscape and visual effects of Carnedd Wen in conjunction with wind farms in SSA-C<sup>25</sup>. By reference to a range of viewpoints, it was concluded the distance between SSA-B and SSA-C is too great for significant cumulative landscape and visual effects to arise, and this is consistent with the position of PCC.
37. Evidence was also presented to session 4 of the inquiry concerning the cumulative landscape and visual effects of grid connections from different combinations of wind farm development to the electricity grid. This evidence was informed by a technical assessment by Mott MacDonald<sup>26</sup> and an environmental appraisal by Land Use Consultants<sup>27</sup>, submitted as SEI at the end of 2013. This SEI demonstrated that it is technically and environmentally feasible to connect the Carnedd Wen wind farm to the National Grid, whether in isolation, in conjunction with Llanbrynmair wind

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<sup>24</sup> RWE-LAND-POE-APP-STEVENSON-SSA-B

<sup>25</sup> RWE-LAND-POE-STEVENSON-S4

<sup>26</sup> AD-RWE-031

<sup>27</sup> AD-RWE-032

farm or with both Llanbrynmair wind farm and some new generation capacity in SSA-C, by means of a heavy duty wood pole connection. This solution would substantially respond to strategic objections from the Alliance and others over the environmental effects of the grid connections, and underlines the practical feasibility of wind farm development in SSA-B. The ability of RWE to connect Carnedd Wen (with further possibilities for the connection of other wind farms as just described) without the need for pylons was explicitly confirmed in the session 4 oral evidence of Dr Lynch of Mott MacDonald.

38. In para. 4.2.3 of its Statement of Case for session 4<sup>28</sup>, PCC affirmed that:

*PCC considers that the parallel twin 132kV OHL connections from the Llanbrynmair and Carnedd Wen sub-stations (to the proposed sub-station at Cefn Coch and/or beyond to the Oswestry sub-station) could be acceptable in landscape and visual terms, both in its own right and cumulatively, subject to appropriate detailed design and mitigation, including the consideration of undergrounding and alternative designs such as parallel twin "trident" poles, to reasonably minimise the landscape and visual effects.*

39. This position is consistent with the conclusions of both the LUC study and Mr Stevenson's evidence to inquiry session 4.

40. One final point I do need to cover on cumulative effects relates to the approach taken by Mr Stevenson to cumulative assessment. In oral evidence in chief he confirmed that he had both assessed the in-combination effects of Carnedd Wen with other developments and the incremental effects of Carnedd Wen on a variety of baselines. He needed to cover this point because, to be fair, it was not entirely clear within his cumulative Appendix 1, although the position was set out in paras 3.65 and 3.8 of his session 4 proof<sup>29</sup>. Responding to paras. 822-826 of PCC's closing submissions, it is not correct that Mr Stevenson adopted only the incremental approach to cumulative assessment. In fact, the reason I covered the matters just rehearsed in evidence in chief was that there might have been accusations that he had only addressed combined effects.

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<sup>28</sup> OBJ-002-SOC-S4

<sup>29</sup> RWE/LAND/POE/STEVENSON/S4

41. In its closing submissions the Alliance claimed at para. 14.42 that Mr Stevenson stated in oral evidence that 'tranquillity will be much diminished' if development proceeded. I do not recall such a comment and do not accept that it was made.

### **Planning Conditions**

42. In order to ensure effective delivery of the landscape enhancements that are integral to the Carnedd Wen wind farm and habitat restoration project, RWE has agreed a number of planning conditions.

42.1 The conditions envisage a series of environmental implementation plans to ensure the transformation of the site from spruce plantations to a more traditional open peat landscape. Whereas the immediate intention of these plans is to provide for the effective management of forestry, drainage, peat and wildlife habitats, etc, especially during construction of the wind farm, their combined effect will be to assist the landscape transformation described.

42.2 The Forestry Management Plan<sup>30</sup> includes provision for the retention of woodland plantations in areas of the site where visual screening from the wind farm is considered desirable, include the north-western slope of the site up which the site access passes.

43. The proposed conditions substantially speak for themselves, but I do need to briefly focus on the colour of the proposed wind turbines. This was discussed in the conditions session and you will remember that I supported the position taken by PCC in its May 2014 "Statement on the Matter of Turbine Colour"<sup>31</sup>. Indeed the position of PCC can be found reflected in paras 58-61 of the 2008 ES, and it was given attention in oral evidence by Mr Stevenson. For the reasons given by Mr Stevenson, in the ES and by PCC, a careful selection of colour can make a difference to perceptions of wind turbines and to visual impact, and I urge you to recognise this in the conditions you will advance to the Secretary of State.

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<sup>30</sup> AD-RWE-029

<sup>31</sup> OBJ-002-016

44. Further planning conditions agreed by RWE would further ensure that the Carnedd Wen project is implemented in a manner informed by landscape and visual considerations.

## Planning Policy Compliance

### *UK Policy*

45. The approach to landscape design and assessment adopted by RWE is consistent with relevant policy provisions of the **Overarching National Policy Statement for Energy** (EN-1)<sup>32</sup>.
- 45.1 Paras. 5.9.5 - 5.9.7 set out the UK Government's broad expectations concerning the assessment of landscape and visual effects undertaken by the applicant. RWE has complied with all relevant provisions in that it has included a landscape and visual assessment in its ES in accordance with published good practice guidance, and has taken into account available landscape character studies - including NRW's LANDMAP resource - and local development plan policy.
- 45.2 The project approach is also consistent with para. 5.9.8 of EN-1, with the potential effects on landscape exerting a significant influence on the design of the proposed wind farm, including its siting, layout and access arrangements.
- 45.3 Paras. 5.9.12 - 5.9.13 of EN-1 address developments outside nationally designated areas that might affect such areas. The need to have regard to the purposes of nationally designated areas is highlighted, and *'the aim should be to avoid compromising the purposes of designation . . .'* (para. 5.9.12), not least through sensitive design. Mr Stevenson's evidence explains how this has been achieved in the current context with respect to Snowdonia National Park.
46. The **National Policy Statement for Renewable Energy Infrastructure** (EN-3)<sup>33</sup> provides additional policy guidance on landscape and visual considerations, including guidance relating specifically to onshore wind projects. Relevant provisions include the following.

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<sup>32</sup> CD-COM-001

<sup>33</sup> CD-COM-002

- 46.1 Para. 2.4.2 states that '*proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity . . .*'. The influence of landscape and visual amenity on the design of the Carnedd Wen project is described in the 2008 ES, subsequent SEI and the evidence of Mr Stevenson.
- 46.2 Section 2.7 of EN-3 addresses onshore wind specifically. According to para. 2.7.17, '*The time-limited nature of wind farms, where a time limit is sought by an applicant as a condition of consent, is likely to be an important consideration for the IPC when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets. Such judgements should include consideration of the period of time sought by the applicants for the generating station to operate and the extent to which the site will return to its original state may also be a relevant consideration*'. Carnedd Wen is a time-limited and reversible proposal.
- 46.3 Para. 2.7.48 – 2.7.49 of EN-3 state that:

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

*2.7.49 The arrangement of wind turbines should be carefully designed within a site to minimise effects on the landscape and visual amenity while meeting technical and operational siting requirements and other constraints.*

Again, the 2008 ES, subsequent SEI and the evidence of Mr Stevenson explain how RWE has pursued this design approach.

#### *Welsh Policy*

47. ***Planning Policy Wales*** (Edition 6, Welsh Government, February 2014)<sup>34</sup> sets out landscape policies in Chapter 5: *Conserving and improving natural heritage and the coast*. It is noteworthy that PPW6 presents its landscape management provisions in the context of wider environmental considerations, including biodiversity and the management of soils as a

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<sup>34</sup> RWE-PLA-03

carbon store (para. 5.1.2), which is the approach adopted for Carnedd Wen. This holistic approach is evident also in section 5.3 of PPW6, which identifies '*measures to conserve landscape and biodiversity*'.

48. Para. 5.3.4 of PPW6 outlines the statutory purposes of National Parks, and para. 5.3.7 advises that '*the duty to have regard to National Park and AONB purpose applies to activities affecting these areas, whether those activities lie within or outside the designated areas*'.
49. To inform appropriate provisions for renewable energy in development plans, paras. 12.8.18 and 12.9.2 of PPW advise local planning authorities to undertake assessments of potential renewable energy resources in their areas. Powys CC has undertaken such an exercise (*The Renewable and Low carbon Energy Assessment*, Aecom, October 2012)<sup>35</sup>.
50. The Aecom report examines the potential contribution of each of the principal renewable energy sources including, on pp 22-32 of the report, from wind. As Figure RWE-3 of the Hearing Statement for the opening session<sup>36</sup> of the current inquiry shows, the central zone of SSA area B, which accords closely with the boundary of the proposed Carnedd Wen wind farm site, is one the largest areas of Powys remaining for potential wind farm development, once identified constraints including National Park boundaries are taken into account. This latest analysis provides further justification for the favourable consideration of Carnedd Wen for a strategic wind energy development. The Aecom report demonstrates that, if one follows the approach recommended in PPW para. 12.8.18, Carnedd Wen emerges as a leading contender for wind energy development quite apart from the strategic imperatives identified in TAN 8.
51. ***Planning Policy Wales Technical Advice Note 8: Planning for Renewable Energy*** (Welsh Government, July 2005)<sup>37</sup> provide guidance on the identification of sites for strategic wind farm development. Para. 2.9 of TAN 8 describes the general characteristics of SSAs. Four of the seven characteristics are landscape-related, confirming that landscape and visual considerations exerted a significant influence on SSA designation. The Carnedd Wen site accords with all of these landscape criteria, being:

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<sup>35</sup> CD-RWE-PLA-001

<sup>36</sup> RWE-006

<sup>37</sup> CD-COM-016

- an upland area (typically over 300m above ordnance datum) which contains a dominant landform that is flat (plateau) rather than a series of ridges;
  - generally sparsely populated;
  - dominated by conifer plantation and/or improved/impoverished moorland;
  - with a general absence of nature conservation or historic landscape designations.
52. Para. 2.10 of TAN 8 identifies some local issues for local planning authorities to consider in order to secure the best outcomes from wind farm development in SSAs. Landscape-related considerations that reflect the suitability of Carnedd Wen for wind energy development include:
- the extent of tree-felling;
  - opportunities to enhance, extend or re-create habitats of significant wildlife or landscape value;
  - local historic and landscape considerations.
53. The potential for strategic wind farm development at Carnedd Wen was reaffirmed by subsequent refinement studies, including the TAN 8 Annex D Study of Strategic Search Areas B ( Carno North ) and C ( Newtown South ) Final Issue Report, 2006<sup>38</sup>, and the Local refinement of TAN 8 Strategic Search Areas B and C Review Exercise 2008<sup>39</sup>, both prepared for Powys CC by Arup. Both studies took the presence of Snowdonia National Park into account.

#### *Local Policy*

54. According to part B in policy SP12: *Energy Conservation and Generation of the **Powys Unitary Development Plan 2010***<sup>40</sup> 'proposals for energy generation from renewable sources will be approved providing that they

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<sup>38</sup> CD-COM-017

<sup>39</sup> CD-COM-018

<sup>40</sup> CD-CON-003-PLA-013

*meet the landscape, environmental, amenity and other requirements set out in this plan’.*

55. General landscape protection provisions are set out in policy ENV2 of the adopted Powys UDP. As noted above, PCC accepts that the effects with respect to Snowdonia National Park have been satisfactorily addressed in the context of this policy (para 8 of SoCG with RWE)<sup>41</sup>. RWE’s habitat restoration proposals are consistent with UDP policy ENV9: woodland planting, part 6 of which seeks to ensure that *‘the integrity of extensive wild, open and undeveloped tracts of land and other upland landscape, which it is important to conserve in its own right, for landscape conservation, nature conservation, recreation or grazing purposes remains unaffected’.*
56. 3.35 Policy E3 wind power includes the following provisions with respect to landscape:

***Policy E3 - wind-power***

*Applications for wind farms including extensions to existing sites and individual wind turbine generators will be approved where:*

*1. They do not unacceptably adversely affect the environmental and landscape quality of Powys, either on an individual basis or in combination with other proposed or existing similar developments. Where the cumulative impact of proposals in combination with other approved or existing wind farms would be significantly detrimental to overall environmental quality they will be refused ...*

57. The policy was not cited by the County Council in its original landscape objections to the Carnedd Wen wind farm and habitat restoration project. On the basis of the evidence presented by RWE to this public inquiry, the Carnedd Wen project provides no offence to UDP policy E3(1).

**Analysis of Policy**

58. The above summary of landscape policy highlights several consistent themes running through policy at all levels, including the need to:

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<sup>41</sup> RWE-PCC-SOCG-LAND-SSA-B

- 58.1 balance landscape and other environmental effects against the clearly-expressed need to bring forward new renewable energy generation capacity in suitable locations;
  - 58.2 have regard to the presence of nationally-designated landscapes, but to not to regard this as a reason for refusal *per se*;
  - 58.3 have regard to the time-limited nature of wind farm development and the reversibility of any adverse effects;
  - 58.4 ensure that detailed consultations take place between wind farm developers and organisations responsible for landscape management and protection;
  - 58.5 view landscape protection in the context of climate change, biodiversity, soil protection and land management objectives;
  - 58.6 adopt a strategic approach to the siting of large wind farms in Wales, and to refine strategic designations in the light of local circumstances;
  - 58.7 consider the individual and cumulative effects of a proposal.
59. All of these core requirements have either been met or are pertinent to the determination of the Carnedd Wen application, and the performance of the project against specific policy objectives has been highlighted at relevant points.
60. Importantly, there is a clear recognition at a national and strategic policy level that wind farms will be visible features in the landscape and will affect the character of the surrounding landscape. It is inevitable that some significant landscape and visual effects will result. It was partly with this concern in mind that the Welsh Government adopted the Strategic Search Area approach for strategic wind farm development in TAN 8<sup>42</sup>. TAN 8 identifies landscapes best suited to accommodating strategic wind farm development, consistent with the 'all-Wales' approach advocated in para. 12.8.13 of PPW<sup>43</sup>. TAN 8 has been drafted with the specific characteristics of wind farms in mind. A corollary of this approach is that most of the Welsh landscape will not host strategic wind farm development. The strategy will only work if a permissive approach

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<sup>42</sup> CD-COM-016

<sup>43</sup> RWE-PLA-03

is adopted to wind farm proposals in those areas of Wales identified as being best suited to large wind farm development – the SSAs.

61. The urgent requirement for new renewable energy generation capacity was acknowledged in the opening session of the current public inquiry, and the Carnedd Wen project responds to this need. However, when weighing the landscape and visual effects of the project from a planning perspective, a significant distinguishing feature of the current proposal is the habitat restoration strategy that forms an integral part of the project. The proposed clear-felling of 1,409 ha of coniferous plantations and the restoration of 459 ha of peat bog will have a beneficial and transformative effect on the landscape of Carnedd Wen. The habitat restoration strategy also includes the selective planting of broadleaved trees in valleys on the site, assisting further the reversion to a more natural landscape. As shown above, the value of such benefits is widely acknowledged in relevant planning policy.
62. Significant weight should attach to these integral scheme benefits, which accord with the various of the landscape policy provisions identified above, including paras. 5.9.22-23 of EN-1<sup>44</sup> on landscape mitigation, para. 2.4.2 of EN-3<sup>45</sup> on the need for good design, para. 5.1.2 of PPW concerning the Welsh Government’s objectives for the conservation and improvement of the natural heritage, and para. 2.10 of TAN 8 concerning opportunities to enhance, extend or recreate habitats of significant wildlife or landscape value. The approach is also consistent with Policy ENV2: *Safeguarding the landscape* of the Powys UDP, which requires *inter alia* that projects should contain appropriate measures to ensure the satisfactory integration into the landscape.
63. Against these landscape benefits must be balanced two considerations which will now be considered in turn – the relationship of the wind farm and Snowdonia National Park, and the acceptability or otherwise of the five wind turbines on the north-eastern edge of the project that Powys CC would prefer to have deleted.

### **The National Park**

64. Carnedd Wen lies outside of any protective landscape designation. However, the presence to the north-west of Snowdonia National Park

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<sup>44</sup> CD-COM-001

<sup>45</sup> CD-COM-002

has, as noted, has influenced the layout and design RWE's proposals as well as informing some objections to the project.

65. The Environment Act 1995<sup>46</sup> imposes a general duty to have regard to the purposes of National Park designation when exercising any functions in relation to or affecting land in a National Park. The purposes of a National Park are to:
- conserve and enhance the natural beauty, wildlife and cultural heritage of the park;
  - promote opportunities for the understanding and enjoyment of the special qualities of the park, by the public.
66. A National Park Authority also has a duty to seek to foster the social and economic well being of the local communities within the Park area.
67. In considering the weight to be given to the effects of the proposed wind farm on Snowdonia National Park it is important to acknowledge that such effects can only be indirect, as no part of the proposed development lies within the National Park. As acknowledged by Capita Symonds<sup>47</sup> (see paras **29-31** above), an effect of the reduced wind farm layout submitted by RWE in 2011 is to *'reduce or eliminate effects on areas to the north around to the west, particularly in the lower parts of the landscape within the National Park and along the A458 corridor'*. Views that would remain of the proposed wind farm from within the National Park would generally be from more elevated positions at greater range from the wind farm than the closest parts of the National Park. The significance of effects on views out of the National Park diminishes with distance.
68. There are various examples of wind farm developments adjacent to National Parks and AONBs. Cemmaes 1 and 2 wind farm in SSA-B is located c. 3 km from the southern edge of Snowdonia National Park. Elsewhere, Kirkby Moor wind farm is less than 1 km from the boundary of the Lake District National Park, and was approved following a call-in. Wharrels Hill wind farm is a similar distance from the boundary of the Lake District National Park, and the Carsington Pastures wind farm, which was allowed on appeal and proceeded following an unsuccessful High Court challenge, lies approximately 2 km from the boundary of the Peak

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<sup>46</sup> CD-VATT-LEG-005

<sup>47</sup> CD-RWE-LAN-03

District National Park. Other examples could be cited, including the Goonhilly wind farm that lies within the AONB on the Lizard peninsula.

69. Another case of interest in the current context is the Den Brook wind farm in Devon (CD-COM/INS/007)<sup>48</sup>, which lies c.5.5 km from Dartmoor National Park. The project was considered at appeal twice, with the first decision being quashed by the Court of Appeal. In both instances the Inspector concluded that the appeal should be upheld, and in both instances the Inspector concluded that the distances between the wind farm and the National Park and the main focal points of visitor interest were such that there would be no significant harm to the natural beauty, character, qualities or setting of Dartmoor, nor any conflict with the purposes of national park designation.
70. Caution must obviously be exercised in acknowledging such precedents because the landscape and visual circumstances of any development will be particular to that project. However, in none of the developments cited was it concluded that the wind farm would significantly compromise the purposes of National Park or AONB designation.
71. On this basis and having regard to the detailed technical evidence of Mr Stephenson, it cannot credibly be concluded that the Carnedd Wen wind farm would compromise the purposes of national park designation. This conclusion is consistent with para. 5.9.13 of EN-1<sup>49</sup> (*The fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent*) and para. 5.3.7 of PPW<sup>50</sup>. Simply put, a holiday or day out in Snowdonia will offer the same opportunities to understand and enjoy the natural beauty, wildlife and cultural heritage of the national park whether or not the Carnedd Wen wind farm is built. A further implication of this is that the social and economic well being of the local communities within the Park area would also be unaffected, a matter considered further in evidence presented to session 4 of the current public inquiry.
72. Although I have not explicitly addressed the evidence of Mr Watkins on behalf of the Alliance (he did not appear and could not be cross-examined) I will, nonetheless, refer to a useful commentary in paras 50-

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<sup>48</sup> CD-COM-INS-007

<sup>49</sup> CD-COM-001

<sup>50</sup> RWE-PLA-03

58 of his Session 2 proof<sup>51</sup> on the ecosystems approach to natural resource management, which is being promoted through the Living Wales programme, and which in turn is being promoted by the Welsh Government. I refer to Mr Watkins' proof for a description of the ecosystems approach. The approach which has been taken to the Carnedd Wen development is entirely consistent with the ecosystems approach to natural resource management, as described in Mr Watkins' proof. Specifically, the development achieves a substantial positive improvement to the landscape and bio-diversity while at the same time playing a part in tackling the adverse effects of climate change. Therefore, to the extent that you give weight to the ecosystems approach, it is supported by the Carnedd Wen development.

73. For all these reasons, it is concluded that the proposed wind farm would be compatible with the presence of the National Park, even before the temporary nature of the wind farm and benefits to Park setting arising from the Carnedd Wen habitat restoration strategy are taken into account. The balance of benefit and disbenefit weighs clearly in favour of the proposals with respect to the National Park in planning terms.

### **Wind Turbines R23, R26, R28, R29 and R30 ('the Carnedd Wen five')**

74. Evidence on the case for retaining or deleting these wind turbines was heard during inquiry session 2. Mr Stevenson pointed out that the removal of the five turbines would result in a 'thinning' of wind turbines in identified viewpoints to the north-east, as opposed to the complete removal of turbines from the view. From a planning perspective the balance to be struck is between the landscape and visual benefit of this 'thinning' and the consequences of losing five turbines that, in other circumstances, would constitute a wind farm in their own right, with a generation capacity of up to 15 MW. As I put to Mr Russell-Vick in XX (he did not accept the point) there would need to be fundamental difficulties with these turbines to warrant their rejection. Mr Russell-Vick confirmed in XX that the concerns of PCC related to Carnedd Wen alone rather than to any cumulative effects.
75. As to the mechanism for any removal of the Carnedd Wen five, this can be achieved by condition. In my view, there is adequate environmental

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<sup>51</sup> ALL-LAND-POE-WATKINS-SSA-B-03

information to support the issue of a consent and permission for a 45 turbine scheme. You have sufficient environmental information to differentiate between the Carnedd Wen five and the remainder of the proposed wind farm.

76. The conflicting positions of PCC and RWE are clear in the evidence before you. There are no methodological differences to resolve between the two witnesses. The visual material required to supplement your site visit comprises Mr Stevenson's Session 2 Appendices 4 and 5<sup>52</sup> and Mr Russell-Vick's Appendix A<sup>53</sup> - noting, however, that his photographs PRV 3 and 4 do not include wirelines and (as put to him) do not greatly assist you. However, PRV 5 is a useful aid as it colour codes the Carnedd Wen five wireframes. I think it is agreed between Mr Stevenson and Mr Russell-Vick that the controlling viewpoints for the purposes of your assessment are V and Z within Mr Stevenson's Appendix 4, with some help to be obtained from vpU (found in Mr Russell-Vick's Appendix A and in Mr Stevenson's Appendix 4).
77. The baseline landscape character and visual amenity of PCC's area of concern, the Banwy valley, is well described by both witnesses. There are no material disagreements about the baseline in terms of quality, value or character.
78. It was noted by Mr Russell-Vick that the Carnedd Wen five lie outside the 2008 Arup refined TAN8 boundary, although within the TAN8 boundary itself. In my view limited weight can be attached to this. As I believe is agreed with PCC, it is the TAN8 boundary that matters and, emphatically, the detailed assessments before the inquiry.
79. It is worth drawing to your attention in closing submissions my XX of Mr Russell-Vick concerning the experience of drivers approaching the National Park. By reference to the viewpoints in Mr Stevenson's Appendix 4 views of the Carnedd Wen five will be lost west of vpW. In terms of views from the National Park while on the A458 PCC has no objections. Therefore, the real concern of PCC relates to the views for drivers and passengers along the short stretch of road between vpU and east of vpV, representing a journey time of a couple of minutes. So far as the driving experience is concerned that is the extent of PCC's concerns.

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<sup>52</sup> RWE-LAND-POE-APP-STEVENSON-SSA-B

<sup>53</sup> OBJ-002-LAND-POE-RUSSELL-APPA1-SSA-B to OBJ-002-LAND-POE-RUSSELL-APPA5-SSA-B

80. As made clear by Mr Stevenson (contrary to the view of Mr Russell-Vick) the impacts about which PCC are concerned are on visual amenity and not landscape character. The two host LANDMAP landscape and visual aspect areas (VSAAs Unit 320 – Banwy Forest – and Unit 571 Pencoed) are attributed low and moderate landscape value respectively. However, these VSAAs are quite distinct from the Llanerfyl Mosaic Farm Lands VSAA (422) about which Mr Russell-Vick was concerned. Mr Stevenson emphasised his view that, although an important factor, the absence of landscape character effects did not solely relate to the fact of the development being in a different landscape from that hosting the viewpoints of concern, but also to his view that the turbines will simply not be seen as belonging in landscape character terms to the valley floor, but to the uplands. All impacts will be on visual amenity and not landscape character.
81. As to vps U, V and Z (see para. 76 above) I make the following points from the evidence:
- From no viewpoint do the turbines step outside the moorland landscape context into the landscape of the Banwy valley; and
  - The thinning achieved by the deletion of the Carnedd Wen five would be marginal, not leading to any material reduction in the magnitude of visual effects.
82. The issue of Carnedd Wen five is anticipated by EN-1<sup>54</sup>, paras 5.9.21–23 of which consider the mitigation of landscape and visual effects, noting (*inter alia*) that a reduction in the scale of a development needs to be balanced against the reduction in function, such as a reduced electricity output. Similarly, para. 2.7.51 of EN-3<sup>55</sup> advises that '*It is unlikely that either the number or scale of wind turbines can be changed without significantly affecting the electricity generating output of the wind farm. Therefore, mitigation in the form of reduction in scale may not be feasible*'. In other words, any adverse landscape and visual effects should be balanced against the need for the project.
83. In the current situation, weight should attach to the fact that there would still be wind turbines in the view if the five machines identified by PCC

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<sup>54</sup> CD-COM-001

<sup>55</sup> CD-COM-002

were removed. There would be a substantial loss of generation capacity for very little landscape or visual gain.

84. I note at this point the observation of Mr Carpenter for PCC in para 4.33 of his closing session hearing statement that in respect of the Carnedd Wen five “the matter is finely balanced”<sup>56</sup>. While Mr Carpenter’s judgment is that the overall harm arising from Carnedd Wen clearly outweighs the benefits if the five turbines remain within the scheme, it is clear that, on behalf of PCC, Mr Carpenter feels that there is a fine balance to be struck. In the view of RWE, there needs to be something fundamentally wrong with the Carnedd Wen five to warrant their objection. There is not.

## **MATTER 5**

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

### **Common Ground**

85. Four of PCC’s original reasons for objecting to the Carnedd Wen project related to transport and highways considerations. The objections reflected concerns over cumulative effects, the absence of a strategic Transport Management Plan (sTMP) and alleged non-compliance with PPW and development plan policy on the need for an acceptable highways access and the environmental effects of construction traffic.
86. Substantial work has been undertaken with the Welsh Government, highways authorities and police to provide the confidence that construction traffic can be properly managed effectively, including abnormal indivisible loads (AILs). This work has paid particular attention to the cumulative effects of more than one wind farm being developed in SSA-B and SSA-C, and includes a sTMP that has Welsh Government approval.
87. In September 2013 RWE, PCC and Welsh Government Transport agreed a statement of common ground<sup>57</sup> covering matters including the

<sup>56</sup> OBJ-002-PLANNINGBALANCE-POE-CARPENTER

<sup>57</sup> RWE-PCC-SOCG-TRANS-SSA-B

methodology for the transport assessment, site access from the A458, construction traffic estimates and a list of transport planning conditions which, with further refinement, have been submitted.

88. In paras 4.1.1 and 4.1.2 of PCC’s Statement of Case for Session 2<sup>58</sup> of the public inquiry, the Council confirmed that it had no objection in principle to the AIL delivery route proposed for Carnedd Wen and no objection also in relation to general construction traffic. Subject to the implementation of relevant plans and conditions there are no outstanding objections in relation to transport matters from the Welsh Government, PCC or the police. Shropshire CC is maintaining its objection<sup>59</sup>.

### *Carnedd Wen Alone*

89. The detailed outcome of the dialogue between RWE and the highways authorities and other interested bodies is explained in chapter 14 of RWE’s 2013 SEI<sup>60</sup> and evidence presented by Mr Atkinson to public inquiry sessions 2<sup>61</sup> and 4<sup>62</sup>. Whereas the original development proposal envisaged two site accesses from the A458, a single site access from the A458 is now proposed. This has been designed to accord with trunk road standards<sup>63</sup> and would be laid out to facilitate the movement of all site clearance and construction traffic. As confirmed in section 14.4.1 and appendix 14.3 of the 2013 SEI, the highway authority responsible for the A458 trunk road, the Welsh Government (Transport), has approved the proposed access arrangements, and a Stage 1 Road Safety Audit has been undertaken (Appendix 1 to Mr Atkinson’s evidence to session 2 of the current public inquiry).
90. Mr Atkinson has also demonstrated to the satisfaction of the Welsh Government and PCC (see para 3.61 of the Session 2 proof of Matt Russell on behalf of PCC<sup>64</sup>) that the approved site access can be optimised at the detail design stage so as to minimise the effects upon existing vegetation (Atkinson proof of evidence for session 2, appendices 2 and 3).

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<sup>58</sup> OBJ-SOC-SSA-B

<sup>59</sup> CON-002-004

<sup>60</sup> AD-RWE-026 to AD-RWE-030

<sup>61</sup> RWE-TRANS-POE-ATKINSON-SSA-B

<sup>62</sup> RWE-TRANS-POE-ATKINSON-S4

<sup>63</sup> CPL-TRA-001

<sup>64</sup> OBJ-002-TRANS-POE-RUSSELL-SSA-B

91. In addition, RWE has achieved substantial reductions from previous estimates of overall construction traffic movements upon the adjoining highway network, as a consequence of the sourcing the majority of stone aggregate from on-site borrow pits and a commitment to operate an on-site concrete batching plant.
92. Chapter 14 of the 2013 SEI explains that, with this mitigation in place, the busiest periods for construction traffic (Table 14.6) will occur during Quarters 16 and 22 of the construction programme, amounting to circa 52 and 47 daily movements to and from the site respectively (see Table 14.6 of the 2013 SEI).
93. AIL deliveries are programmed to commence during the last quarter of Year 5 and extend over an eighteen month period. The potential effect upon journey times of the slower moving AIL vehicles, over that of other general construction vehicles, is addressed through the use of 'Passenger Car Units' (PCUs – defined in para. 57 of the 2013 SEI), with AILs attributed 20 PCUs to account for their size and effect upon highway operational capacity, and with other heavy goods vehicles (HGVs) given a value of 2.3 PCUs.
94. It is estimated that, during the busiest period (Table 14.7 of the 2013 SEI), there could be between a 0.05% and 3.88% change to traffic volumes (by direction and expressed as PCUs) along the strategic AIL route from Ellesmere Port to Welshpool and less than 5% through Welshpool town centre. Whilst there would be an increase of approximately 8.66% to 18.25% along the A458 to the west of Welshpool, this increase in absolute terms would only amount to 104 PCUs over a five hour period and can still be regarded as low. It is predicted that there would be less than a 6% change on other parts of the highway network. All of these effects are, of course, short-term.
95. With regard to the evidence of Mr Durgan you will remember that I took Mr Atkinson through this in evidence in chief.<sup>65</sup> It became clear that there were a number of errors in Mr Durgan's approach which undermined his evidence. Notably:
- (a) His evidence on alternative traffic estimates was flawed because it did not take account of staff journeys.

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<sup>65</sup> ALL-TRANS-POE-DURGAN-SSA-B

- (b) Mr Durgan asserted that during the summer periods there would be a significant increase in general traffic, although he did not support this assertion with any traffic data. In response Mr Atkinson (oral evidence in chief) took the inquiry to Table 14.6 of 2013 SEI and made it clear that during the third quarter of each year (July-September) volumes of construction traffic would be lower than during other periods of the year, countering effectively the point made by Mr Durgan (but noting again that Mr Durgan produced no figures).
- (c) Contrary to the evidence of Mr Durgan, the PCU conversion factors referred to in para 88 are deliberately higher than reality warrants in order to present worst realistic case. For example, it has been assumed that all loads will be transported to the site in articulated vehicles, whereas in practice a large number of loads will be in two or three axle rigid lorries with a lower PCU conversion factor. As said by Mr Atkinson in evidence in chief a combination of these factors means that a 53% contingency allowance has been built into the traffic estimates.
96. There were other points in Mr Durgan's evidence for sessions 2 and 4<sup>66</sup> which were effectively rebutted by Mr Atkinson, but my purpose here is not to attack every point that Mr Durgan made. Rather, on the basis of the clarity of Mr Atkinson's evidence, and the errors to which I have drawn attention within Mr Durgan's evidence, it seems to me quite clear that Mr Atkinson's evidence is to be preferred, together with his conclusions.
97. The assessment concludes that, even on the A458 on the approach to the development site where the magnitude of traffic impact would be greatest, the magnitude of change would be regarded as 'negligible'. In terms of significance this would be regarded as 'neutral or slight'. Nonetheless, RWE recognises that traffic management will be an important element of the development's mitigation strategy.

### **Cumulative Effects**

98. I also draw attention in this context to the joint written statement produced on behalf of RWE, RES and Vattenfall in response to the session

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<sup>66</sup> ALL-TRANS-POE-S4-05

4 evidence of Mr Durgan. I commend that joint written statement as an effective rebuttal to the points recorded that Mr Durgan made. During session 4 Mr Atkinson presented evidence on the following transport and traffic effects of the Carnedd Wen project in conjunction with other proposed wind farms in Powys:

- (a) the delivery process and efficient management of transporting wind farm turbine components (AILs);
- (b) the cumulative effects of and management of other non-AIL construction traffic upon the local and strategic road networks.

99. The Welsh Government (Transport) confirmed in its Statement of Case for Session 4<sup>67</sup> that Carnedd Wen construction traffic can be managed in accordance with the methodology set out in Sections 1 to 3 of the sTMP and thereby ensure the safety and free flow of trunk road traffic. Accordingly WG(T) has proposed five planning conditions for Carnedd Wen and has requested that these be included with any permission granted by DECC. These requirements are incorporated in substance in the schedule of planning conditions.

100. PCC advised in its Section 5 of its Statement of Case for Session 4<sup>68</sup> that, in relation to transport:

*'PCC judges that the AIL route from Ellesmere Port to the combined sites, set out in the sTMP, is reasonable and appropriate subject to clarifications and Conditions . . . PCC will seek Conditions requiring a common approach to mitigation design and implementation, as well as traffic management, between individual developments utilising the same routes or the same services'.*

## **Planning Conditions**

101. RWE acknowledges that the traffic management will be an important element of the proposed development's mitigation strategy (e.g. 2013 SEI, section 14.6, paras. 71-84<sup>69</sup>). The Applicant's proposed strategy focuses upon both the management of general construction traffic at the local level (scheduling, routeing and timing of deliveries) and the careful coordination of AIL movements from Ellesmere Port along various trunk

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<sup>67</sup> CON-001-SOC-S4-RWE

<sup>68</sup> OBJ-002-SOC-S4

<sup>69</sup> AD-RWE-026 to AD-RWE-030

roads, through Welshpool town centre and then westwards along the A458.

102. The planning conditions demonstrate how the traffic management strategy would be implemented. They would ensure:
- The submission of design details for the site access from the A458;
  - All AIL movements will be subject to the strategic Transport Management Plan;
  - AIL deliveries will be scheduled and coordinated in accordance with an approved plan;
  - The approval and implementation of highway improvement works before commencement of construction;
  - Surveys of highway structures and necessary works before commencement of construction;
  - A highways condition survey along AIL and other construction traffic haulage routes;
  - Building condition and structural surveys for properties on the B4381 at Severn Street, Welshpool;
  - The prior approval of a Construction Traffic Management Plan for non-AIL traffic;
  - The prior approval of a Construction Traffic Management Plan for maintenance and decommissioning traffic.
103. At the strategic level, RWE has worked with Renewable UK Cymru and with other wind farm developers in connection with the preparation of the sTMP. All AIL deliveries to the wind farm developments would be coordinated and be undertaken with police escorts. This will ensure the movements are made safely, having regard to the interests of other road users and of local communities along the delivery route.
104. At the local level, it is proposed that a site traffic management plan (2013 SEI paragraphs 50, 84 and 91) would be set up and operated by the main contractor. Amongst other things, this would set out the hours of working, the time periods for deliveries and proposed off-site haulage

routes. RWE's intention is to control construction traffic and manage deliveries such that they are scheduled to arrive before the morning, or after the evening traffic peaks and generally within the 10:00 – 15:00 period.

## Planning Policy

105. The traffic management approach promoted by RWE is consistent with the following policy provisions:

105.1 Section 5.13 of EN-1<sup>70</sup>, which addresses the need to undertake a transport assessment in consultation with the highway authorities and to identify appropriate mitigation, including for the construction phase of a project. Para. 5.13.7 highlights the potential to employ planning obligations to mitigate transport impacts and states that, subject to the satisfactory obligations being put in place, *'development consent should not be withheld and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure'*.

105.2 Paras. 2.7.74 – 2.7.82 of EN-3<sup>71</sup>, which encourages developers to coordinate AIL deliveries in order to minimise disruption;

105.3 Para. 8.7.1 of PPW6<sup>72</sup>, which specifies the matters that should be taken into account when considering development that has transport implications;

105.4 The guidance on transport assessment and road access arrangements set out in Part 9 of PPW TAN18: Transport<sup>73</sup>;

105.5 UDP policy GP1: *development control* of the adopted Powys UDP<sup>74</sup>, parts (A) and (G) of which require development proposals to take into account the needs of all transport users and arrangements for highway access and parking;

105.6 UDP policies GP4: highway and parking requirements and T3 transport assessments and travel plans

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<sup>70</sup> CD-COM-001

<sup>71</sup> CD-COM-002

<sup>72</sup> RWE-PLA-03

<sup>73</sup> CPL-PLA-013

<sup>74</sup> CD-CON-003-PLA-013

105.7 UDP policy E3: wind power, which states that:

*Applications for wind farms including extensions to existing sites and individual wind turbine generators will be approved where ...*

*5. They do not unacceptably adversely affect the enjoyment and safe use of highways and the public rights of way network, especially bridleways (including during the construction phase).*

*6. They would be capable of being served by an acceptable means of highway access and any new or improved roads and accesses required would not have unacceptable environmental impacts.*

106. It is concluded that the traffic impact of the proposed wind farm at Carnedd Wen is acceptable in planning terms. Appropriate surveys, physical works and traffic management procedures can be secured and implemented by planning conditions or obligations. In planning terms, substantial positive weight should attach to the point that, whether the proposed development takes place in isolation or concurrently with other wind farms, RWE has identified appropriate provisions for the effective management of all construction traffic such that the effects upon the strategic and local highway network will generally be slight or neutral in significance, and temporary in duration. This approach is compliant with relevant planning policy.

## **MATTERS 6 and 9**

**“(6) The individual and combined noise generated during construction and from the operation of the proposed developments taking into account the cumulative impact that other wind farms in Powys area which have already been granted planning permission or where planning permission has been applied for.”**

**“(9) The potential impact of the proposed developments on human health.”**

Noise

107. In its original objection to the Carnedd Wen project on 13 March 2012, PCC raised no objection to the noise effects of the proposals.

108. On 4 October 2013 RWE and PCC agreed a statement of common ground in relation to noise matters<sup>75</sup>, which drew the following conclusions:

*4.1 Both construction and and operational noise for the Carnedd Wen wind farm can be dealt with by appropriately worded planning conditions. A proposed set of construction noise conditions and an operational noise condition, which is worded in line wth the recommdations of the IOA GPG (Institute of Acoustics Good Practice Guide)<sup>76</sup>, are included at Annex A.*

*4.2 When assessed in accordance with the current best practice methodology, as set out within the IOA GPG, operational noise levels from the Carnedd Wen wind farm are below the relevant noise limits in the proposed noise condition at all times and at all residential dwellings.*

*4.3. The proposed operational noise limits for Carnedd Wen wind farm have been derived to appropriately account for the potential cumulative effects of noise arising from other wind farms in the region, both existing and proposed, as listed in paragrpah 2.7.*

109. Evidence was heard during session 4 of the current public inquiry on the need for a safeguarding planning condition on Amplitude Modulation (AM).<sup>77</sup>

110. I refer to the paper submitted for the purposes of the conditions session which discussed the imposition of a condition relating to AM. I also refer to the additional decisions of the Secretary of State in England, sent to you last week – no inquiry document number - in which he has declined to consider the imposition of an AM condition following the approach of the RUK December 2013 recommended condition. For reasons given in the submitted paper, RWE is strongly opposed to the imposition of an AM condition.

111. There are no outstanding objections from statutory bodies in relation to noise.

### **Conclusions on Evidence**

112. RWE's assessment of operational noise has followed the approach recommended in *ETSU-R-97: The Assessment and Rating of Noise from*

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<sup>75</sup> RWE-PCC-SOCG-NOISE-SSA-B

<sup>76</sup> CPL-NOI-005

<sup>77</sup> APPLICANTS-NOISE-POE3-BULLMORE-S4

*Wind Farms*<sup>78</sup>, in accordance with advice contained in TAN 8<sup>79</sup> and the National Policy Statement for Renewable Energy Infrastructure (EN-3)<sup>80</sup>. Throughout the noise assessment process, RWE consulted with PCC and secured agreement on all methodologies and noise assessment locations. The assessment included the potential for cumulative noise effects, taking into account other existing and proposed wind farms in the locality including the proposed Llanbrynmair wind farm.

113. Only the adjacent Llanbrynmair wind farm development was concluded to have potential for cumulative noise impacts with Carnedd Wen. RWE's assessment therefore included the appropriate apportionment of noise limits to properly account for potential cumulative noise effects arising from the Carnedd Wen and Llanbrynmair wind farms.
114. Infrasound, low frequency noise, vibration and health risks have been considered. There is no evidence for health effects caused directly by exposure to the noise and vibration from wind turbines. Government advice reflects the current position on this issue.
115. In my view it is clear that it has been satisfactorily demonstrated that the Carnedd Wen wind farm can be constructed and operated within noise limits derived according to current best practice.

### Conditions

116. RWE has proposed a planning condition that would control construction noise in accordance with the relevant British Standard and Code of Practice. A further planning condition and its attached guidance notes address operational noise. It is considered that these planning conditions would provide appropriate protection with respect to noise, and that the conditions meet the relevant tests set out in Welsh Office Circular 35/95.<sup>81</sup> However, for reasons referred to in paragraph **106**, RWE does not believe it appropriate to impose a condition to regulate AM.

### Planning Policy

117. On the basis of the detailed project-specific and cumulative noise evidence presented to this inquiry by RWE and the extensive common

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<sup>78</sup> CPL-NOI-001

<sup>79</sup> CD-COM-016

<sup>80</sup> CD-COM-002

<sup>81</sup> RWE-PLA-06

ground agreed with Powys CC on this topic, and subject to the imposition of appropriate planning conditions, it is concluded that the current proposals accord with relevant policy including NPS EN-1<sup>82</sup> (Part 4 *Assessment Principles* and Section 5.11 *Noise and Vibration*), EN-3 (paras. 2.7.52 - 2.7.62 *Noise and Vibration*), PPW6<sup>83</sup> (Section 13.15 *Development management and noise and lighting*), TAN 8 (paras 2.14 – 2.18 *Noise and Low frequency noise*), TAN11: *Noise*<sup>84</sup> and Powys UDP<sup>85</sup> policies GP1 *Development Control (part 3 - amenity)*, E3 *Wind Power*, MW6 *Borrow Pits* and MW14 *Noise*.

118. From a planning perspective I believe that substantial weight should be given to Dr Bullmore’s conclusion that the proposed Carnedd Wen wind farm can be constructed and operated fully in accordance with all relevant planning policies, standards and other guidance documents.

#### *Human Health*

119. No statutory body is objecting to the Carnedd Wen project on health grounds.
120. Wind farms are a very clean form of electricity generation with no emissions to the atmosphere or water courses under normal operation. Given the general remoteness of the Carnedd Wen site, the potential of the proposed wind farm to affect human health is all the more restricted.
121. However, health concerns are sometimes attributed to adverse effects of wind farms on residential amenity. This should not be a matter for concern in the current context in view of submitted environmental information and Mr Jeff Stevenson’s evidence on the visual component of residential amenity specifically, and of the measures that RWE proposes to protect residential amenity, including:
- 121.1 planning conditions to control construction working hours;
  - 121.2 planning conditions to control wind farm noise (see my submissions on Matter 6);
  - 121.3 a planning condition to control shadow flicker;

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<sup>82</sup> CD-COM-001

<sup>83</sup> RWE-PLA-03

<sup>84</sup> CPL-PLA-012

<sup>85</sup> CD-CON-003-PLA-013

121.4 provisions in the Construction Environment Management Plan, proposed by condition, to protect water courses and private water supplies.

122. With these safeguards in place it is concluded that the current project would not give rise to any material effects on human health.

### **MATTERSs 13, 12 and 7**

***“(13) The impact of the proposed developments on peat.”***

***“(12) The impact of the proposed developments on hydrology and hydrogeology, to include impacts on sensitive water features (streams, pond, wetlands); impacts on private water supplies; fisheries and watercourses; and impacts on ground water; and the likely effectiveness of proposed mitigation measures.”***

***“(7) The individual and cumulative impact of the proposed developments on biodiversity, including the ecological functioning of European Protected Sites e.g. the River Wye Special Area for Conservation (SAC), Berwyn Special Protection Area (SPA) and South Clwyd Mountains (SAC); European Protected Species under the Conservation of Habitats and Species Regulations 2010 (as amended) (“The Habitats Regulations”); and the likely effect of proposed mitigation measures.”***

### **Overview**

123. I will deal with matters 13, 12 and 7 in that order. RWE engaged Dr Mills, Mr Edwards, Mr Piper and Dr Lowther as a team in order to address each of these matters, by immediate reference to the objection of NRW dated 16 February 2012. It also utilised the services of Mr Houtmeyers, who has built a number of wind farms for RWE and others. You will remember that each of these witnesses gave evidence at one time in Session 2. RWE has never treated the issues represented in matters 13, 12 and 7 as divisible, partly but not especially because part of the proposed development comprises a very long term (50 years) HRMP. I am convinced that it was the joined up approach of those who became witnesses on these topics which enabled NRW to withdraw its extensive and detailed 2012 objection to the proposed development. That said I deal with the topics individually because they are separate matters for the purposes of your recommendation to the Secretary of State.

124. It is also worth noting that Mr Stevenson was kept closely apprised of all that was happening in terms of the work of Dr Lowther, Mr Edwards, Dr Mills and Mr Piper so that landscape considerations were co-ordinated with peat, hydrological and ecological issues.

## **MATTER 13 - Peat**

### **Common Ground**

125. The survey, interpretation and protection of the site's peat resource has been a particular focus of interest in the Carnedd Wen project, and the subject of extensive technical dialogue with CCW's peat specialists. The 2011 SEI<sup>86</sup> responded to CCW's original concerns by ensuring that wind turbines would not be sited on peat greater than 1.5m deep and that other infrastructure would, where possible, be placed on peat less than 1.5m deep. Proposed infrastructure was removed entirely from a raised bog at Esgair y Ffordd, and extensive peat probing was undertaken at Ffridd Goch to inform micrositing.
126. CCW responded to the 2011 SEI in a letter to DECC dated 16 February 2012<sup>87</sup>, objecting to the revised application and raising a number of new concerns in the light of guidance entitled '*Assessing the impact of wind farm developments on peatlands in Wales*'<sup>88</sup> that CCW had published January 2010. These included the number and spread of peat sampling locations, both over the site as a whole (including the forest); the amount of sampling at infrastructure locations and the representativeness of the peat model for the site. These queries were taken into account during scoping of the SEI 2013 for peat, following further communication with CCW. The 2013 SEI<sup>89</sup> provided further detail of the methods RWE would apply to protect restore the peatland areas of Carnedd Wen. Subject to relevant safeguards NRW is no longer sustaining an objection to the Carnedd Wen project on the grounds of its effects on peat.
127. Informed by CCW's earlier concerns PCC's first reason for objection stated that '*The Environment Statement and subsequent Supplementary*

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<sup>86</sup> AD-RWE-013 TO AD-RWE-018

<sup>87</sup> CD-RWE-HYD-10

<sup>88</sup> CD-CPL-ECO-005

<sup>89</sup> AD-RWE-026 to AD-RWE-030

*Environmental Information are unable to demonstrate that significant ecological impacts would not occur from the proposed development and insufficient weight is given to the rising status of peat habitats as a key ecological resource. Effects upon the peat and bog habitats within the site and its environs have not been adequately documented, which has prevented a satisfactory assessment or identification of appropriate mitigation measures’.* Subject again to the safeguards described later in this section, the County Council has now withdrawn this objection.

## **Conclusions on Evidence**

128. Published guidance, survey results, dialogue with consultees and mitigation proposed by RWE are explained in the evidence of Dr Andy Mills<sup>90</sup>, a specialist in peat management. He explains the extent of peat survey work undertaken originally by RWE, and how this was supplemented following discussions with CCW.
129. Dr Mills identifies the relevant industry standards and guidance that were used during the peat survey work. It is noteworthy that RWE also called upon the expertise of its construction managers in Scotland, who offer extensive practical experience of wind farm construction in comparable peatland environments in Scotland. Evidence was presented to session 2 of the current public inquiry by Morgan Houtmeyers of RWE’s onshore projects team<sup>91</sup>, who demonstrated that the methodologies proposed to construct the wind farm and associated environmental mitigation techniques are practical, appropriate and achievable at Carnedd Wen, and have been demonstrated through wind farms already built.
130. In the light of this experience, the published guidance and CCW’s advice, RWE commissioned extensive further peat probing, including samples taken from within the dense Sitka spruce plantations on the site. This probing work increased the total number of sample points within the application boundary from 1,643 to 2,364 (Volume 2 Appendix 12.1 of the SEI 2013). RWE is committed to undertaken even more peat-probing post-consent, in order to inform micro-siting.
131. A Peat Management Plan has also been prepared in order to determine the most environmentally responsible way of re-using peat excavated during construction (2013 SEI Volume 4 – Plan 1.5 Peat Management

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<sup>90</sup> RWE-PEAT-POE-MILLS-SSA-B

<sup>91</sup> RWE-CONSTRUCTION-POE-HOUTMEYERS-SSA-B

Plan)<sup>92</sup>. In accordance with Scottish best practice, a peat stability assessment was also undertaken to evaluate the potential for peat landslides to occur, based on physical factors associated with documented landslides in peatlands. The level of peat slide risk has been defined and mitigation measures were defined in order to protect the peat during construction.

132. The effect of the additional peat depth survey and modelling has been to reduce the estimate of peat excavation volumes at Carnedd Wen from 468,688m<sup>3</sup> in 2008, to 252,113m<sup>3</sup> in 2011 and 183,842m<sup>3</sup> in 2013. This represents a very large reduction in the effects of the wind farm on the peat resource at Carnedd Wen.
133. On the basis of the calculations in the Peat Management Plan, 99.5% of the estimated excavation volume of peat is accounted for in borrow pit restoration, restoration of disused quarries, restoration of forest drains on shallow slopes, shoulder construction on floating roads, landscaping of crane pads and reinstatement around turbine foundations. The residual 0.5% (equivalent to 774m<sup>3</sup>) could be re-used through restoration of forest drains that have yet to be fully mapped.
134. All of this work was undertaken in close cooperation with RWE's ecology, hydrology, forestry and construction specialists to ensure that the proposed mitigation is practicable and holistic in its approach.

### **Planning Conditions**

135. The measures that RWE proposes to protect and enhance the extensive peat resource of Carnedd Wen need to be viewed in the context of the wider range of environmental management plans that the Applicant is proposing. These are identified in the submitted conditions and include provision for a Habitat Restoration Management Plan<sup>93</sup>, a Forest Management Plan<sup>94</sup>, a Drainage Management Plan<sup>95</sup> and a Construction Environmental Management Plan<sup>96</sup>, together with proposed conditions to provide for an Ecological Clerk of Works.

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<sup>92</sup> AD-RWE-029

<sup>93</sup> AD-RWE-029 VOLUME 4 SEI 2013

<sup>94</sup> AD-RWE-029 VOLUME 4 SEI 2013

<sup>95</sup> AD-RWE-029 VOLUME 4 SEI 2013

<sup>96</sup> AD-RWE-029 VOLUME 4 SEI 2013

136. The Habitat Restoration Management Plan will incorporate a Peat Management Plan, setting out how peat losses associated with wind farm construction will be minimised and how peat will be used to support the wider habitat restoration and management Plan objectives. As a part of this plan, large areas of peatland on the site which have been degraded by drainage, both directly and through water uptake by trees, will be returned to a more natural function, with higher water tables and better conditions for peat formation.
137. With these plans in place I believe that the peat interest of the site will be well protected.

### **Planning Policy**

138. According to para. 2.7.32 of National Policy Statement EN-3<sup>97</sup>:

*Onshore wind farm sites within England and Wales may be proposed on peat. Peat is a sensitive habitat that is important for many species of flora and fauna. In some instances, soil disturbance may lead to change in the local hydrological regime which can affect biodiversity. Further, peat is rich in carbon so disturbance of peat can result in a release of carbon stored in soils.*

139. In the 2013 SEI, and through the evidence of Dr Mills, RWE has demonstrated how it has embraced these sensitivities. Dr Mills has explained how the peat depth data collected for Carnedd Wen and the peat model derived from it are suitable for the various requirements of this wind farm application. He concludes that the peat is sufficiently dispersed across the site and sufficiently well understood in proximity to proposed infrastructure to determine the most appropriate areas of the site in which wind turbines, tracks and ancillary wind farm infrastructure can be sited.
140. With relevant mitigation in place in the form of the Peat Management Plan, supported by the Peat Model and Peat Stability Assessment, it is my view that the Carnedd Wen project would be compliant with relevant planning policy and guidance including:

140.1 Part 4.3 of EN-1<sup>98</sup> and part 1.7 of EN-3<sup>99</sup> concerning compliance with the Conservation of Habitats and Species Regulations

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<sup>97</sup> CD-COM-002

<sup>98</sup> CD-COM-001

2010<sup>100</sup>, which implement the EU Habitats and Birds Directives in England and Wales;

140.2 Para 2.7.36 of EN-3 which advises in respect of peat that *'The assessment should include any effects on biodiversity resulting from the disturbance of important habitats such as peat. Where relevant, the IPC may instruct applicants to provide geotechnical and hydrological information in support of applications, identifying the presence of peat at each site, including the risk of landslide connected to any development work'*.

140.3 Para 5.1.2 of PPW6<sup>101</sup>, which states that *'The Welsh Government's objectives for the conservation and improvement of the natural heritage are to (inter alia) promote the functions and benefits of soils, and in particular their function as a carbon store'*.

140.4 Planning Policy Wales Technical Advice Note 5: *Nature Conservation and Planning* (2009)<sup>102</sup>, including the guidance contained in Chapter Four: *Nature conservation in development control: procedures*; and Chapter Six: *Development affecting protected and priority habitats and species*.

140.5 Powys UDP<sup>103</sup> policy ENV3: *Safeguarding biodiversity and natural habitats*. Although RWE proposes to extract peat only for construction and restoration purposes as opposed to any commercial use of the product, the current proposals are nonetheless consistent with Powys UDP policy MW9: *Peat extraction*, which states that:

*Proposals for peat extraction will only be permitted in areas that are already damaged by human activity and where the overall proposal, including the proposed restoration scheme, will lead to an improvement in the site's nature conservation value . . .*

141. For these reasons the project also complies with Parts 2 and 7 of Powys UDP Policy E3: Wind Power which requires that:

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<sup>99</sup> CD-COM-002

<sup>100</sup> CD-CON-003-LEG-001

<sup>101</sup> RWE-PLA-03

<sup>102</sup> CD-CON-003-PLA-011

<sup>103</sup> CD-CON-003-PLA-013

2. They do not unacceptably adversely affect wild life habitats or species that are of international, national or local importance in accordance with Policies ENV3-7
  7. Applicants are able to demonstrate through land management schemes that there will be adequate mitigation or compensation for any adverse impact on environmental quality, wild life habitats or heritage features.
142. By the means described, RWE aims to restore approximately 459 hectares of blanket bog habitat that currently lies beneath conifer plantation, together with a further 131 hectares that occupies relatively small and often linear areas between plantation blocks. Whether viewed individually or in conjunction with the wider habitat restoration initiative of which peat management forms a part, these are environmental benefits on a national scale of significance that should weigh heavily in favour of the project in the overall planning balance.

## **MATTER 12 - Hydrology and Hydrogeology**

### **Common Ground**

143. Following submission of the ES<sup>104</sup> and SEI 2011<sup>105</sup> CCW objected to the potential effects on peat drainage as a consequence of construction of wind farm infrastructure. CCW also expressed concern over the potential significant effect on the Pen Llyn a'r Sarnau Special Area of Conservation (SAC) as a result of sediment runoff during felling operations, and the potential effects on the freshwater lakes - Llyn Gwyddior and Llyn Coch-hwyad - as a consequence of proposed felling and construction activities.
144. Following further dialogue with CCW, RWE responded to these objections in the 2013 SEI<sup>106</sup>. NRW has since lifted its objections to the proposed development on ecological and hydrological grounds and confirmed that any potential adverse effects associated with these interests can be addressed through planning conditions and obligations. A Drainage Management Plan and other environmental plans are identified in the planning conditions<sup>107</sup>.

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<sup>104</sup> AD-RWE-003 to AD-RWE-009

<sup>105</sup> AD-RWE-013 to AD-RWE-018

<sup>106</sup> AD-RWE-026 to AD-RWE-030

<sup>107</sup> AD-RWE-029 VOLUME 4 PLANS

145. The first three of PCC’s original reasons for objecting to the Carnedd Wen project reflected concern over the effects of the proposal on habitats and alleged shortcomings in the assessment of these effects. Having regard to the 2013 SEI, the environmental plans that RWE proposes to protect and enhance the hydrological characteristics of the site and the amended position of NRW, the County Council is no longer sustaining any objection the Carnedd Wen on these grounds.

### **Conclusions on Evidence**

146. In his evidence to session 2 of the current public inquiry<sup>108</sup>, Dr Alan Edwards explained how he has worked closely with Mr Piper, Dr Lowther and Dr Mills, co-witnesses in specialist areas of forestry, ecology and peat respectively, to assess the potential effects of the proposed development on the site’s hydrology and hydrogeology and to identify appropriate mitigation measures to minimise adverse effects. Further forest, habitat restoration, peat and drainage management and mitigation measures were identified and used in the iterative design of the proposed development.
147. Dr Edwards has identified the baseline geological and hydrological conditions on the Carnedd Wen site, noting that the site application boundary straddles the watershed of the River Severn and the Afon Dyfi (River Dovey), which flow to the east and west of the site respectively. The Afon Dyfi flows to the coastal Pen Llyn a’r Sarnau SAC, which is designated for a range of features including estuaries and European otter. The Dyfi Estuary is designated as an SPA for its ornithological interest. The proposed development is wholly outside the Pen Llyn a’r Sarnau SAC and Dyfi Estuary SPA, but three of the five principal catchments draining the site (Afon Dugod, Afon Tafolog and Afon Cwm) form part of the Afon Dyfi catchment.
148. A detailed review of water resources established that, whilst there are many water abstractions within 3km of the application site boundary, no water abstraction is recorded closer than 500 metres from proposed wind farm infrastructure.
149. With appropriate controls and mitigation measures there would be no significant adverse effect from the proposed development on any surface watercourses. This conclusion includes consideration of flood risk.

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<sup>108</sup> RWE-HYDRO-POE-EDWARDS-SSA-B

Similarly, the development would have no significant impact on the geology or hydrogeology of the area. Significantly, the proposed habitat restoration works would seek to restore conditions that would have prevailed on the site prior to the planting of the forest and the draining of the peat to that end. These benefits are considered further under Matters 7 and 13.

150. The hydrological and hydrogeological assessment of the Carnedd Wen habitat restoration and wind farm project demonstrates that, with appropriate site procedures and mitigation measures, there would be no significant adverse effect on any surface watercourses that might be potentially affected by runoff, sedimentation and drainage from the wind farm. This includes Pen Llyn a’r Sarnau SAC and the Llyn Gwyddior and Llyn Coch-hwyad lakes.
151. Equally the development would have no significant adverse effects on the geology or hydrogeology of the area, including saturated peat, groundwater, aquifers, local water supplies and geological sites of interest.

### **Planning Conditions**

152. The safeguards that RWE proposes are described under Matter 7. A series of integrated environmental plans are provided in planning conditions, including a Drainage Management Plan and a Peat Management Plan<sup>109</sup>.
153. The comprehensive measures that are incorporated to protect private water supplies specifically were considered during session 2 of the public inquiry. Works near to and within watercourses would only be undertaken with prior approval from NRW and where appropriate in accordance with a Flood Defence Consent. Mitigation measures will be enforced by means of a Construction and Environment Management Plan (CEMP). The CEMP would be submitted to PCC for approval prior to development commencing on site<sup>110</sup>.

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<sup>109</sup> AD-RWE-029 VOLUME 4 PLANS

<sup>110</sup> AD-RWE-029 VOLUME 4 PLANS

## Planning Policy

154. A review of Dr Edwards' evidence and the draft environmental plans already identified against relevant policy against relevant policy confirms that the comprehensive approach that RWE has taken to the protection and enhancement of the hydrological and hydrogeological interest of Carnedd Wen is consistent with the following policy requirements:

154.1 Parts 5.3: biodiversity and geological conservation, 5.7: flood risk and 5.15: water quality and resources of EN-1<sup>111</sup>;

154.2 Relevant provisions of PPW6<sup>112</sup> Chapter 13: Minimising and managing environmental risks and pollution, including section 13.2: Flood risk and climate change; section 13.4: Development Management and Flood Risk and section 13.12: Development management and improving the quality of air and water.

154.3 PPW Technical Advice Note (TAN) 15: Development and Flood Risk (2004)<sup>113</sup>, including section 7: *Assessing flooding consequences* and section 8: *Surface water run-off from new development*;

154.4 The following policies of the Powys UDP<sup>114</sup>:

- *Policy SP10: Minerals developments* – which defines the circumstances in which mineral extraction would be permitted, including the local interest in such extraction taking place;
- *Policy SP14: Development in flood risk areas* – concerning the need to avoid development in areas of high risk of flooding;
- *Policy ENV 3: Safeguarding biodiversity and natural habitats* – including 'habitats and features that are of importance for wild flora and fauna';
- *Policy MW1: Mining and waste disposal* – including parts 5 (protection of watercourses and groundwater), 6 (avoidance of risks to water and soil), 7 (protection of aquifers and groundwater) and 9 (protection of natural watercourse systems);

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<sup>111</sup> CD-COM-001

<sup>112</sup> RWE-PLA-03

<sup>113</sup> CD-VATT-HYD-001

<sup>114</sup> CD-CON-003-PLA-013

- *Policy MW6: Borrow pits* – encouraged as a means of reducing road traffic ,subject to environmental protection provisions including the need for restoration and aftercare;
- *Policy MW18: Geomorphology, archaeology and history* – ensuring that these aspects of minerals extraction sites are protected;
- *Policy DC9: Protection of water resources* – ensuring *inter alia* that development is not detrimental to existing water abstractions, fisheries, amenity or nature conservation;
- *Policy DC11: Non-mains sewage treatment* – which is permissible subject to identified safeguards where connection to mains sewerage is unavailable;
- *Policy DC13: Surface water drainage* – including the protection of wetland habitats and the need to avoid unacceptable flooding;
- *Policy DC15: Development on unstable or contaminated land* – including provisions requiring site investigation and measures to prevent ground instability or contamination;
- *Policy E3: Wind power*, of which Part 2 affords protection for wild life habitats and species of acknowledged importance, while Part 7 requires applicants to demonstrate adequate mitigation through land management schemes

155. The restoration of the site’s natural hydrological characteristics is an integral part of RWE’s proposals to restore the habitat of Carnedd Wen. Given the geographical extent of the hydrological restoration works, the detailed implementation plans that RWE has prepared to ensure its delivery and the lack of outstanding objection from local and statutory bodies, it is my view that substantial positive weight should attach to the hydrological benefits of the project in the overall planning balance.

## **MATTER 7 - Ecology**

### **Common Ground**

156. The evidence presented to session 2 of RWE's ecologist<sup>115</sup>, Stewart Lowther, explained how RWE maintained an effective dialogue with CCW in order to arrive at an agreed approach to the protection and enhancement of the ecology of the Carnedd Wen site during the construction and operation of the proposed wind farm. As a result, no remaining issues of substance exist between NRW and RWE on ecological matters, provided that the Habitat Restoration Management Plan and other environmental plans identified in planning conditions are secured and implemented as both parties intend.
157. The first three of PCC's original reasons for objecting to the Carnedd Wen project reflected concern over the ecological effects of the proposal and alleged shortcomings in the assessment of these effects. Having regard to the 2013 SEI, the environmental plans that RWE proposes to protect and enhance ecology and the amended position of NRW, the County Council is no longer sustaining any objection the Carnedd Wen on any of the grounds originally specified.

### **Conclusions on Evidence**

158. In his evidence Mr Lowther explains how the assessment of ecological effects and the accompanying dialogue with CCW evolved, and how this process informed the refinement of the wind farm design and the preparation of SEI. In particular, he describes how RWE responded to the following outstanding concerns raised by CCW following the submission of the 2011 SEI<sup>116</sup>:
- the likely effects on peatlands and the extent of blanket bog;
  - the effects of forestry felling;
  - effects on freshwater lakes;
  - effects on the Berwyn SPA and the Pen Llŷn a'r Sarnau SAC;

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<sup>115</sup> RWE-ECOLOGY-POE-LOWTHER-SSA-B

<sup>116</sup> AD-RWE-013 to AD-RWE-018

- the requirement to further the conservation and enhancement of the features for which the Corsydd Llanbrynmair SSSI was designated.
159. An innovative and noteworthy feature of RWE’s response has been the integrated approach to the survey and proposed future management of peat beneath the forest canopy, involving the team’s ecologists, hydrologists, drainage engineers, forestry consultants and peat specialists. A model of peat distribution across the site has been developed, as explained in the Habitat Restoration and Management Plan (HRMP) that accompanied the SEI 2013<sup>117</sup>.
160. Upon completion of additional peat probing work in 2012/13, further refinements were made to the layout of the proposed wind farm. These included the micrositing of three turbines, a reduction in the length of access track and the removal of an access track that crossed blanket bog between turbines R48 and R49. A protocol has been agreed with NRW whereby, prior to final micrositing of the wind farm infrastructure, surveys will be undertaken within the micrositing areas and agreement reached with relevant stakeholders to locate infrastructure on the areas of shallowest peat, or those supporting the least sensitive habitats.
161. In addition, a Forestry Management Plan<sup>118</sup> was provided to explain how forestry operations will take account of the underlying habitats and their potential for restoration. Planned felling operations will result in a much lower impact than would be the case under the established commercial felling plans for the forest that would continue to be implemented in the absence of a wind farm. I also record agreement with NRW that the previously proposed track between T13 and T15 should be deleted (now recorded in the amended submitted plan Figure 1.2).
162. The means by which any adverse effects on the Llyn Coch-hywad and Llyn Gwyddior freshwater lakes and the plant species they support would be avoided were also set out in SEI 2013. Having reviewed the SEI 2013 NRW has now withdrawn its objection with regard to the effects on freshwater lakes.
163. In terms of potential effects on the Berwyn SPA NRW advises that an appropriate assessments is required to demonstrate that the project

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<sup>117</sup> AD-RWE-029 VOLUME 4 PLANS

<sup>118</sup> AD-RWE-029 VOLUME 4 PLANS

would not have an adverse impact on the integrity of the Berwyn SPA. It further advises that likely significant effects on the Pen Llŷn a'r Sarnau SAC could be avoided if construction work was undertaken in accordance with certain conditions (now submitted).

164. Following a review of the status of black grouse and hen harriers in the area, and considering their absence and the disproportionately large area of the site that was proposed to be managed for them, the habitat restoration plans within Carnedd Wen were re-focussed on the restoration of upland habitats and specifically blanket bog. Active blanket bog is a European priority habitat at both the European and national levels. Other target habitats on the site include upland heathland, mires and upland oak woodland, which are habitats of principal importance in Wales. Moreover, in proposing the removal of conifer woodland from the Corsedd Llanbrynmair SSSI, the project will further the conservation and enhancement of the features of special scientific interest.
165. The clearance of forestry in order to facilitate the project would result in an adverse effect on woodland songbird populations, although this is of minor significance and would occur in any event, in the course of normal forestry operations.
166. Mr Lowther concludes that the proposed Outline Habitat Restoration and Management Plan, which would be implemented if the overall scheme gains consent, would deliver significant gains to biodiversity that considerably outweigh any remaining negative effects of the proposals. In view of these benefits, NRW has indicated that it is agreeable to the approach promoted by RWE. As noted in relation to Matter 4 the habitat restoration and management strategy will also have landscape and visual benefits that should be taken into account in the overall planning balance.
167. I need to clarify one point from the closing submissions of the Alliance. In para. 14.9 of the submissions there seems to be an acceptance that there are now no black grouse on the site at any time of year. However, in 14.28 the Alliance states that it is now accepted that black grouse are present. Para. 14.28 is incorrect – RWE is in agreement with NRW on this point.

## Cumulative Effects

168. Cumulative ecological effects are only likely to arise in the case of bird populations and only in combination with the adjacent proposed Llanbrynmair wind farm. The prevailing habitats on the two sites, and hence their ornithological interests, differ markedly in general terms. However, both schemes require the permanent removal of conifer plantation that currently supports a woodland songbird population that is of a District level of importance, and which includes a number of UK Biodiversity Action Plan species including dunnock, song thrush, lesser redpoll and bullfinch. This would be a significant, although moderate, negative effect that cannot be mitigated, towards which the Carnedd Wen project would make the greatest contribution.
169. No significant cumulative ecological effects were identified between Carnedd Wen and wind farms proposed in SSA-C.

## Habitats Regulations Assessment

170. In paras. 50-52 of his proof of evidence Mr Lowther indicated that<sup>119</sup>, with suitably worded planning conditions and subject to an Appropriate Assessment, it can be clearly concluded that there would be no adverse effects on the integrity of the Berwyn SPA and Pen Llŷn a'r Sarnau SAC, whether alone or in combination with other projects. Mr Lowther contributed to the drafting of the environmental plans referred to in planning conditions, partly with the aim of ensuring that the integrity of European sites will be protected.

## Planning Conditions

171. The submitted planning conditions include provision for a Habitat Restoration Management Plan incorporating a Peat Management Plan, a Forest Management Plan, a Drainage Management Plan and a Construction Environmental Management Plan. Planning conditions are proposed to provide for an Ecological Clerk of Works.
172. The proposed Forestry Management Plan would prevent any adverse effects from felling on the component parts of the Corsedd Llanbrynmair SSSI, and the Habitat Restoration and Management Plan would benefit the features for which this SSSI was designated.

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<sup>119</sup> RWE-ECOLOGY-POE-LOWTHER-SSA-B

173. It is proposed that an Ecological Clerk of Works (ECoW) would be appointed to ensure that the specific mitigation measures are undertaken. In addition, a geotechnical specialist will be appointed to the project for the period of civil design and construction works.

### Planning Policy

174. Mr Lowther confirms that the Carnedd Wen habitat restoration project represents one of the largest schemes to restore blanket bog from plantation woodland in Wales, and would certainly be the largest such project to be undertaken without recourse to public funding. He considers that the proposed HRMP would make a significant contribution towards the achievement of Welsh targets for the restoration and enhancement of blanket bog, upland oak woodland and upland heathland, and would provide a framework for ongoing monitoring and research.
175. A review of Mr Lowther's evidence and the draft environmental plans against relevant policy confirms that the comprehensive approach that RWE has taken to the protection and enhancement of the ecological interest of Carnedd Wen is consistent with the following policy requirements:
- 175.1 Part 4.3 of EN-1<sup>120</sup> and part 1.7 of EN-3<sup>121</sup> concerning compliance with the Conservation of Habitats and Species Regulations 2010, which implement relevant sections of the EU Habitats and Birds Directives in England and Wales;
  - 175.2 Part 5.3 of EN-1 and paras. 2.7.30 – 2.7.40 of EN-3 concerning the assessment and protection of sites and interests statutorily designated for their biodiversity and geological conservation value;
  - 175.3 Relevant parts of PPW6<sup>122</sup> Chapter 5: *Conserving and Improving natural heritage and the coast*, including guidance on the protection of biodiversity, statutory and non-statutory sites and assets and trees and woodland;

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<sup>120</sup> CD-COM-001

<sup>121</sup> CD-COM-002

<sup>122</sup> RWE-PLA-03

- 175.4 Planning Policy Wales Technical Advice Note 5: *Nature Conservation and Planning* (2009)<sup>123</sup>, including the guidance contained in Chapter Four: *Nature conservation in development control: procedures*; Chapter Five: *Development affecting designated sites and habitats*, and Chapter Six: *Development affecting protected and priority habitats and species*. TAN5 was cited in Powys CC's third reason for objecting to the Carnedd Wen project, an objection now withdrawn;
- 175.5 The following policies of the Powys UDP<sup>124</sup>, two of which (ENV3 and ENV6) were cited in PCC's third reason for objecting to the Carnedd Wen project, an objection now withdrawn:
- *Policy SP3: natural, historic and built heritage* – which requires development proposals to safeguard features natural heritage importance;
  - *Policy ENV3: safeguarding biodiversity and natural habitats* – which seeks to maintain biodiversity and protect natural habitats from adverse forms of development;
  - *Policy ENV4: internationally important sites* – which sets conservation objectives for European protected habitats, the relevant sites in the current context being Berwyn SPA or the Pen Llŷn a'r Sarnau SAC;
  - *Policy ENV5: nationally important sites* - affording protection for sites such as the Corsedd Llanbrynmair SSSI;
  - *Policy ENV6: sites of regional and local importance* – giving protection to features of local nature conservation, geological or geomorphological importance;
  - *Policy ENV7: protected species* – reinforcing statutory protection provisions.
  - *Policy E3: Wind power*, of which Part 2 affords protection for wild life habitats and species of acknowledged importance, while Part 7 requires applicants to demonstrate adequate mitigation through land management schemes.

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<sup>123</sup> CD-CON-003-PLA-011

<sup>124</sup> CD-CON-003-PLA-013

176. In proposing the removal of conifer woodland from the Corsedd Llanbrynmair SSSI, the project is in keeping with the requirement, under Section 28G of the Wildlife and Countryside Act as amended<sup>125</sup>, for determining authorities to further the conservation and enhancement of the features by virtue of which the site is of special scientific interest.
177. Habitat restoration is an integral part of RWE's proposals and is included in the description of development. Having regard to the national significance of the habitat restoration programme in terms of its scale and scope, the detailed implementation plans that RWE has prepared to ensure its delivery and the lack of outstanding objection from local and statutory bodies, I conclude that substantial positive weight should attach to the ecological benefits of the project in the overall planning balance.

## **Matter 10**

### **"The impact of the proposed developments on cultural heritage."**

#### **Common Ground**

178. Cadw has no objection to the current proposals. In its consultation response to PCC in April 2009 it advised that it was satisfied with the EIA methodology and confirmed that no scheduled ancient monuments, registered parks and gardens or historic landscapes would be affected by the proposals.
179. Having regard to Cadw's advice, PCC raised no concern about the effects of the proposals on cultural heritage grounds in its objection to the Carnedd Wen project on 13 March 2012.<sup>126</sup> There has been no necessity for common ground to be agreed on this topic.

#### **Conclusions on Evidence**

180. The EIA for the Carnedd Wen project took account both the direct and indirect effects on cultural heritage. Chapter 10 of the 2011 SEI<sup>127</sup> considered direct effects on cultural heritage assets on the site, and Chapter 10B considered the indirect visual effects of the proposed wind farm on statutorily designated sites in and around the development site.

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<sup>125</sup> CD-CPL-LEG-004

<sup>126</sup> CD-RWE-LAN-02

<sup>127</sup> AD-RWE-013 to AD-RWE-018

181. For current purposes the effects of the proposed development on individual types of asset will briefly be summarised.

*Scheduled Ancient Monuments And Other Archaeological Features*

182. Chapter 10 of the 2011 SEI identifies the direct effects of the proposed wind farm on scheduled ancient monuments and other features of archaeological interest. Figure 10.1 in volume 3 of the 2011 SEI maps cultural heritage assets on the site. The study indicates that communities have been using the Carnedd Wen uplands since the Bronze Age. 101 sites and features of cultural heritage interest have been identified within the application boundary for the wind farm. No nationally important archaeological sites have been identified, although there are features of regional and local significance.
183. Potential physical effects have been identified for over 30 sites or features located within 150 metres from proposed works, including assets that might be affected by peat regeneration works. Three cultural heritage assets are potentially of high or moderate value – a medieval building platform, a post-medieval road and an eighteenth century turnpike road. Most features of high or medium value will be avoided at the development stage by careful micro-siting in accordance with the policy preference for *in situ* protection. The remainder would be the subject of specific mitigation measures. With mitigation, the effects of turbine and track construction are predicted to be slight. The potential significance of these effects is also assessed as slight.
184. Having regard to the possibility that unknown features might be presented in wooded areas of the site, and to the known features, a written scheme of investigation is proposed with submitted conditions. Provided that the recommended mitigation measures are applied, the direct effects of the scheme both on known and unknown features of archaeological interest are assessed as small.
185. Chapter 10B of the 2011 SEI considers the indirect effects of the proposed Carnedd Wen wind farm on features of archaeological value. Table 10B.7 identifies the predicted indirect effects of the proposed wind farm on scheduled ancient monuments and their settings within 5 km of the proposed wind turbines. 14 such assets are assessed, and in all cases there would be no adverse effect (and thus no harm).

*Listed Buildings*

186. There are no listed buildings within the application site boundary for the Carnedd Wen project.
187. Table 10B.8 in chapter 10B of the 2011 SEI identifies the predicted effects of the Carnedd Wen wind farm on listed buildings and their settings within 2.5 km of proposed wind turbines. 15 listed buildings are assessed, and in no case would there be a significant adverse effect on setting. No harm to any listed building is anticipated. In terms of the approach to be taken to any determined effects on the setting of a listed building, I can adopt paras. 112-114 of PCC's closing submissions, and delete my less well put draft submission. It is, however, clear on the evidence that no difficulty arises for Carnedd Wen under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as recently explored by the Court of Appeal in the Barnwell case addressed in the PCC submissions).

*Conservation Areas*

188. No conservation areas fall within the application site boundary for the Carnedd Wen project. Accordingly, s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, concerning the need to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area *is not engaged* in the current context.
189. As explained in para. 88 of Chapter 10B of the 2011 SEI, the closest conservation area is at Llan, a hamlet 5.5 km to the south-west of the southern end of the proposed wind farm, centred on St Mary's church. Para. 88 concludes that the presence of wind turbines in the wider landscape would be peripheral an appreciation of the conservation area. Although potentially visible, the presence of turbines in the distance would not affect the character or the appearance of the Llan conservation area and would fall far beyond its setting. There would be no harm to the setting of the conservation area.

*Historic Landscape And Registered Parks and Gardens*

190. No registered parks and gardens lie within the application site boundary..
191. There are no designated historic landscapes within a 5km radius of the turbines. The nearest registered park and garden is Plas Machynlleth,

approximately 14.5 km west-south-west of the closest proposed turbines. Gregynog (Tregynon) lies approximately 15.5-17.5 km to the south-east of the proposed wind farm. The proposed wind farm would have no material effect on these assets.

### Planning Conditions

192. The heritage assessment employed available desk-top sources and a systematic field survey of all open ground within the Development Area. Due to the tree density it was not feasible to conduct systematic ground surveys within the conifer plantations, but appropriate mitigation to compensate for this omission is proposed, as Cadw acknowledged.
193. A planning condition proposes a written scheme of investigation during construction works and the clear marking out of areas of cultural heritage sensitivity to avoid any incidental damage. Table 10.5 on page 17 of Chapter 10 *Direct Impacts on Cultural Heritage* in the 2011 SEI identifies the mitigation works that the proposed archaeological scheme of investigation will include for different phases of the construction process. Providing that the recommended mitigation is applied, the potential effects of the scheme both on known and unknown features was assessed as being small.

### Planning Policy

194. Available evidence, including fieldwork and the analysis of aerial photographs of the site taken before afforestation, indicate that the Carnedd Wen site has a relatively low level of cultural heritage value, perhaps reflecting the fact that upland peat bogs have never provided an environment conducive to human habitation. No significant adverse effects would occur on the setting of cultural heritage assets in the wider locality. Nonetheless, appropriate measures are proposed to protect cultural heritage features within the site from harm during the construction and land restoration phases of the project.
195. This approach accords with the following policy provisions:
- 195.1 EN-1<sup>128</sup> section 5.8: Historic environment;
- 195.2 EN-3<sup>129</sup> paras. 2.7.41 – 2.7.45 concerning onshore wind farm impacts on the historic environment;

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<sup>128</sup> CD-COM-001

- 195.3 Planning Policy Wales<sup>130</sup> Chapter 6: *Conserving the historic environment*, including para. 6.5.4 on archaeological watching briefs and provisions for the recording of remains, the requirements of which are reflected in the proposed planning condition, requiring an archaeological scheme of investigation.
- 195.4 Welsh Office Circular 90/96 *Planning and the Historic Environment: Archaeology*, Part 2(B) of which provides advice on the handling of archaeological matters in the planning process.
- 195.5 Powys UDP<sup>131</sup> policy E3(4), the need to avoid unacceptable impacts on any buildings or features of conservation or archaeological interest; policy SP3: *Natural, historic and built heritage*, which affirms the need to protect, conserve and where possible enhance sites and assets, heritage; Policy ENV17: *Ancient monuments and archaeological sites*, and policy ENV18 *Development proposals affecting archaeological sites*, which provides for field investigation, *in-situ* preservation wherever possible where archaeological remains of importance are revealed on development sites, or measures to facilitate archaeological mitigation such as site excavation, survey or a watching brief if *in situ* preservation is not practical. Again, these requirements are provided for in the proposed archaeological scheme of investigation.
196. With this policy conformity in mind it is my view that material weight should attach to the fact that the Carnedd Wen site allows the delivery of a large wind farm and habitat restoration development without significant adverse consequences for cultural heritage on the site or on the surrounding area.

## **MATTER 11**

### ***"The individual and combined impact of the proposed developments on aviation."***

197. This matter need receive no attention from me in closing since there were and are not objections to Carnedd Wen on the basis of impacts on aviation interests.

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<sup>129</sup> CD-COM-002

<sup>130</sup> RWE-PLA-03

<sup>131</sup> CD-CON-003-PLA-013

**MATTER 14**

***"The potential for the proposed developments to be connected to the electricity grid network (DECC document 'The consenting process for onshore generating stations above 50MW in England and Wales: a guidance note on section 36 of the Electricity Act 1989 refers')."***

198. To a substantial extent I have addressed this Matter within submissions on landscape and visual effects. I refer in particular to paras 37-40 and to what I said at the start of these submissions at para 3.
199. A technical assessment of grid connection options for Carnedd Wen and other proposed wind farms in SSA-B and SSA by consulting engineers Mott MacDonald<sup>132</sup>, and an accompanying environmental appraisal by Land Use Consultants<sup>133</sup>, was submitted as SEI at the end of 2013.
200. For the Carnedd Wen project specifically, the significant conclusion arising from these assessments is that an environmentally acceptable grid connection solution is available under a range of wind farm development scenarios in the two SSAs, subject to the detailed route assessment and design that would normally be undertaken when providing a new grid connection. As noted under Matter 4, SEI prepared in late 2013 by Mott MacDonald and LUC demonstrates that it is technically and environmentally feasible to connect the Carnedd Wen wind farm to the National Grid in isolation, in conjunction with Llanbrynmair wind farm or with both Llanbrynmair wind farm and an element of new generation capacity in SSA-C, by means of a heavy-duty wood pole connection. This solution would substantially respond to strategic objections from the Alliance and others over the environmental effects of the grid connections, and underlines the practical feasibility of wind farm development in SSA-B.
201. In para. 4.2.3 of its Statement of Case for session 4, Powys CC affirmed that:

*PCC considers that the parallel twin 132kV OHL connections From the Llanbrynmair and Carnedd Wen sub-stations (to the proposed sub-station at Cefn Coch and/or beyond to the Oswestry sub-station) could be acceptable in landscape and visual terms, both in its own right and*

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<sup>132</sup> AD-RWE-031

<sup>133</sup> AD-RWE-032

*cumulatively, subject to appropriate detailed design and mitigation, including the consideration of undergrounding and alternative designs such as parallel twin 'trident' poles, to reasonably minimise the landscape and visual effects.*

202. I note that at the grid hearing session on 25 March 2014 the applicants agreed that there would be no viability constraints to the achievement of a 132 kV grid solution.
203. In my view, therefore, it is clear that there is the potential for Carnedd Wen wind farm to be connected to the grid, both from a technical perspective and in terms of environmental acceptability noting, however, that detailed EIA would be required of any grid connection proposal. Nevertheless, all that Matter 14 specifies is that you should advise the Secretary of State on the potential for developments to be connected to the grid network. Not only can you report (perhaps obviously) that there is such potential, but I believe that you can firmly report that Carnedd Wen can be connected in terms which do not offend the advice given by Minister Griffiths in his July 2011 letter.<sup>134</sup> On the basis of submissions already made no new pylons will be required to connect the project or a combination of projects including Carnedd Wen.
204. On this basis, I believe that, in the terms of para. 4.9.3 of NPS EN-1<sup>135</sup>, you can be satisfied *'that there are no obvious reasons why the necessary approvals'* for a Carnedd Wen grid connection are likely to be refused. I say this on the basis of the scope of Matter 14 and the environmental information provided by Mott MacDonald and Land Use Consultants in December 2013.

## **MATTER 8**

***"The individual and combined social and economic impact of the proposed developments, including on tourism."***

### **Common Ground**

205. I refer here to the rebuttal proof of Jill Kibble on behalf of the Alliance submitted for the closing session.<sup>136</sup> Mr Cradick provided a rebuttal

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<sup>134</sup> CD-COM-020

<sup>135</sup> CD-COM-001

<sup>136</sup> ALL-SOCIOECO-POE-S4-04-ADDENDUM

statement<sup>137</sup> in response to Mrs Kibble’s document which I commend as a very clear exposition of the findings of the recent Regeneris study.<sup>138</sup> In fact, as made clear by Mr Cradick, the conclusions to the Regeneris study substantially assist the case advanced by him on behalf of RWE. They certainly present no evidence supporting the case of the Alliance in relation to the impacts of wind farms on tourism.

206. In its eighth reason for objection, Powys CC expressed concern about the *'detrimental effect on tourism and other economic factors both for Powys and the Snowdonia National Park'* arising from the landscape and visual effects of the project. However, neither Powys CC nor the Snowdonia National Park Authority is maintaining an objection to the Carnedd Wen project on the grounds of adverse socio-economic and tourism effects.

### Conclusions on Evidence

207. Evidence on the socio-economic and tourism effects of the proposals was presented during session 4 of the inquiry.<sup>139</sup> It was demonstrated that there is clear acknowledgement in UK and Welsh energy, planning and economic policy of the economic benefits that can accrue from wind farm development. For Carnedd Wen, these benefits have been identified by Regeneris Consulting<sup>140</sup>, and would represent a substantial inward investment to the local and Welsh economies. These would be tangible benefits, substantiated by studies of other wind farm developments. RWE is committed to developing local supply chains for goods and services required in connection with the wind farm.
208. RWE proposes measures to enhance the value of the Carnedd Wen site to visitors, including measures that would enhance the amenity and interest of Glyndŵr's Way, whilst seeking to maintain existing recreational uses on the site. No significant adverse cumulative adverse effects on tourism have been identified.
209. The Carnedd Wen wind farm would lie entirely outside of Snowdonia National Park and would have no physical effect on it. Potential effects on the National Park would be indirect, being limited to landscape and visual considerations. In the light of the evidence it is RWE’s position

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<sup>137</sup> RWE-SOCIOECO-REBUTTAL-CRADICK-S4

<sup>138</sup> ALL-SOCIOECO-POE-ADDENDUM-APP-S4-04

<sup>139</sup> RWE-SOCIOECO-POE-CRADICK-S4

<sup>140</sup> CD-RWE-ECON-03 Regeneris Report 2012

that the proposed Carnedd Wen wind farm would not materially affect those qualities of Snowdonia National Park that make it attractive to visitors. It is worth recording Mr Stevenson's evidence to the effect that SNPA's own promotional material show that the principal promoted attractions within the National Park (including promoted routes for walkers) lie well beyond the range of significant visual effects as determined by Mr Stevenson (see Appendix to the Session 2 proof of Mr Stevenson<sup>141</sup>).

210. I need to respond to paras. 2.5 and 4.2 of the closing submissions of the Alliance. In 2.5 reference is made to a large rise in unemployment in Carno. However, in 4.2 the point is made that Powys has one of the lowest unemployment rates in Wales. In RWE's view, the evidence supports the Alliance's submission at 4.2 rather than any implications of rising unemployment such as might be concluded from para. 2.5. As stated in the heading to Alliance para 4.2, Powys would appear to have a currently stable economy.

### **Planning Conditions**

211. To secure enhanced public access to the site a planning condition provides for the submission and approval of a public access strategy for the site, including new permissive paths and bridleways.
212. The transport management measures described under Matter 5 are designed to ensure that visitors, amongst others, are not significantly inconvenienced by AIL movements during the construction phase of the project.

### **Planning Policy**

213. From a socio-economic perspective, the Carnedd Wen project was shown in evidence presented to session 4 to accord with UK and Welsh policy and relevant development plan provisions.
214. For the reasons given in this evidence I trust that the Inspector will acknowledge the substantial and tangible socio-economic benefits of the Carnedd Wen development and accord them significant weight in his recommendation to the Secretary of State.

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<sup>141</sup> RWE-LAND-POE-APP-STEVENSON-SSA-B

## OTHER MATTERS

215. Before turning to matters 1, 2 and 3 and the planning balance I address some further issues, including those on which you have asked to be further advised.

### ***Shared Access***

216. In this section I deal with the proposal by PCC that conditions should be imposed upon any deemed planning permission for Carnedd Wen so as to secure the implementation of the project in a way which accommodates the potential for AIL traffic destined for Llanbrynmair Wind Farm to use the access to the Carnedd Wen plateau from the junction with the A458 trunk road.

217. On 19 May I submitted a notice of legal submissions that I would be likely to make. I incorporate below most of the content of that document and then address matters debated orally during this session.

218. The topic of shared AIL access has come into the inquiry in evidence within Session 2 and through a note circulated by PCC to the inquiry on 31 December 2013.<sup>142</sup> At this point I refer to para. 509(a) of the PCC closing submissions. This paragraph criticised RWE for not engaging with RES on shared access prior to February 2014. Not only is this incorrect, but quite clearly it could not reasonably be said that there is a duty on RWE to facilitate an access for Llanbrynmair (beyond perhaps the cooperation which RWE has shown).

219. RWE opposes the imposition of the currently proposed conditions or any condition that regulates the implementation of the Carnedd Wen development by reference to a wish to ensure that AIL traffic serving Llanbrynmair can use the Carnedd Wen access.

220. In support of RWE'S position I make the following primary points, referring as necessary to law and policy:-

220.1 For a condition to be lawful it must be necessary, relevant to the development proposed and reasonable<sup>143</sup>.

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<sup>142</sup> OBJ-002-PROC-006

<sup>143</sup> Newbury District Council – v – Secretary of State for the Environment (1981) AC578.

- 220.2 As a matter of policy<sup>144</sup> a condition will only be valid if it satisfies the tests described in paragraph 6.1 and in addition it is relevant to planning, precise and enforceable. However, I will not be submitting that one or more conditions could not be drafted which satisfy these three tests. The concern of RWE relates to the legal tests set out in the Newbury case referenced in paragraph **217.1**.
- 220.3 The implementation of Carnedd Wen could not prevent Llanbrynmair using the Carnedd Wen access provided that those seeking to implement Llanbrynmair secure the necessary land rights and secure permission for Llanbrynmair on a basis which enables the use of the Carnedd Wen access and the link between Carnedd Wen and Llanbrynmair.
- 220.4 RWE is not concerned about how Llanbrynmair might secure that its section 36 consent and deemed planning permission enabled it to use the Carnedd Wen access. And RWE has not stood and cannot stand in the way of RES securing the necessary land rights. Even if RWE did wish to stand in the way of RES in securing land rights it would ultimately very likely not be able to do so, given that RES can obtain compulsory purchase powers with the benefit of a Generation Licence issued under the Electricity Act 1989 (if RES decided to secure a Generation Licence rather than a specific exemption from the requirement to obtain one).
- 220.5 So far as the Carnedd Wen development is concerned AIL deliveries are proposed to be enabled through the strategic Transport Management Plan and the associated proposed Transport Tool. If by that stage Llanbrynmair has secured access for AILs using the Carnedd Wen access then the Transport Management Plan and the Transport Tool will regulate AIL slots. RWE will have no power to stand in RES' way through the allocation of these slots.
- 220.6 RWE would not wish its construction programme to be prejudiced by Llanbrynmair, but ultimately that is a matter beyond its control given the strategic Transport Management Plan and the proposed Transport Tool. No planning condition is required to be imposed

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<sup>144</sup> Welsh Office Circular 35/95

on the planning permission for Carnedd Wen in order to achieve the objectives sought by PCC.

- 220.7 Put another way, for the condition proposed by PCC to be lawful and in accordance with policy it would have to be properly predicated on the assumption that the Carnedd Wen consent and deemed planning permission somehow enabled interference with the wish of RES to secure AIL access through Carnedd Wen. As previously noted that cannot be the case.
221. Turning to the oral exchanges in the Conditions Session I need to respond to the observations made by Mr Cosgrove and Mr Fraser. Dealing first with the point made by Mr Cosgrove concerning the need to take a strategic planning view of Area B I don't need to agree or disagree with what he has said. As I made clear in my response nothing that Mr Cosgrove said addressed the submission that I had made concerning the need for condition to be attached to Carnedd Wen to achieve any planning objective. My submissions on necessity remain untouched by any strategic planning point.
222. A second point made by Mr Cosgrove related to the potential for the Carnedd Wen development to be implemented in a way which in fact hampered the use of the Carnedd Wen access by Llanbrynmair for its AIL traffic. In response I said, and maintain, that the layout for Carnedd Wen is fixed subject to micrositing. We have heard no evidence that the micrositing of elements of the Carnedd Wen development would in anyway hamper AIL access for Llanbrynmair.
223. Turning now to what Mr Fraser said in response to my submissions I do not wish or need to repeat what had to be said in response to his point about the attitude of RWE. What both PCC and RES are ignoring is that RWE can do nothing to prevent shared access. Whilst, as I have acknowledged, in the best of all worlds RWE would rather not accommodate AIL traffic from Llanbrynmair for good commercial and practical reasons, given its complex habitat restoration programme, RWE will not seek to stand in the way of sharing its access.
224. Finally, I need to respond to footnote 667 on page 252 of the PCC closing submissions. This addresses my written legal submissions on the question of shared access. This footnote fails to address two points:

a). it still fails to address the necessity for the imposition of a condition on Carnedd Wen, ignoring the inability of RWE to prevent the use by RES of the Carnedd Wen access; and

b). in circumstances where Llanbrynmair and Carnedd Wen have consent (scenario 1, PCC closing submissions 575(a)), PCC would have control over the shared access issue through its ability to reject implementation plans submitted by RWE which failed to embrace shared access.

*Application of Section 38(6) Town and Country Planning Act 1990*

225. With my Opening Statement I produced (Appendices A & B) a decision of the High Court<sup>145</sup> and an Opinion of Lord Malcolm<sup>146</sup> which make it clear that section 38(6) of the 1990 Act (according primacy to the development plan in decision making) is not engaged in considering section 36 applications. That is not to say the development plan should not be given appropriate weight, but there is no requirement to accord it primacy.

*Generation Licence*

226. On 21 February 2014 the Gas & Electricity Markets Authority gave notice under section 6(A)(5) of the Electricity Act 1989 that an electricity generation licence had been granted to Carnedd Wen Wind Farm Limited, a company wholly owned by RWE, authorising it to generate electricity at Carnedd Wen. The fact of the grant of this generation licence is only possibly relevant in the context of:

- the application of para 1(2) of Schedule 9 to the Electricity Act 1989<sup>147</sup>; and
- the decisions of the Outer House of the Court of Session in Scotland in the Sustainable Scotland Case 2013) CSOH158) and Trump International Golf Club Scotland Limited -v- Scottish Ministers (2014 CSOH22).

227. The Sustainable Scotland case gave rise to concern when the decision of the Outer House emerged. We now have a distinctly contrary view from

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<sup>145</sup> CD-COM-030

<sup>146</sup> VATT-PLA-001

<sup>147</sup> CD-COM-023

the same court in the Trump decision. We still await a decision of the Inner House of the Court of Session in the Sustainable Scotland case. I think that you can entirely duck issues which arise under these cases when reporting to the Secretary of State on the basis that this is a matter for the Secretary of State and not for you under your Minute of Appointment. The only point I need to make now is that a generation licence attaches to the Carnedd Wen project, although you also need to note that it is held by a special project vehicle and not RWE itself. I think that in any event not much will hang on this point.

228. Of more relevance is para 1(2) of Schedule 9 to the 1989 Act. Whilst the generation licence was granted after submission of the section 36 application, and while the generation licence is held by a wholly owned subsidiary of RWE, it is the position of RWE that it has in practice handsomely addressed the provisions of para 1(2), such that if you take the view that this paragraph does apply to RWE no difficulty arises in the case of Carnedd Wen. Notably, no evidence has been given to the inquiry that has been a failure to consider alternative options for any element of the development. In those circumstances, I would doubt that PCC would contend any breach of para 1(2) of Schedule 9 so far as Carnedd Wen is concerned.

#### *Habitats Regulations Assessment*

229. I have addressed the Habitats Regulations in relation to Matter 7. NRW has advised that an appropriate assessment will be required of Carnedd Wen in relation to the Berwyn SPA and the Pen Llŷnn a'r Sarnau SAC. On submitted evidence and indeed as agreed by NRW, the implementation of the Carnedd Wen wind farm and habitat restoration project will, subject to implementation in accordance with appropriate conditions, not have an adverse effect on the integrity of either of these European Sites. You will need to report to the Secretary of State on this matter.

#### *Natural Environment and Rural Communities Act 2006*

230. In their notice of possible legal submissions at para 11 PCC's Counsel drew attention to section 40 of the Natural Environment and Rural Communities Act 2006.<sup>148</sup> I agree that this section is engaged so far as Carnedd Wen is concerned. In discharging his duty the Secretary of

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<sup>148</sup> CD-CPL-LEG-012

State will no doubt have regard to the substantial bio-diversity benefits of the Carnedd Wen development.

### *Common Land*

231. In September 2013 RWE applied to the Planning Inspectorate Wales under section 38 Commons Act 2006 for consent to construct works on land in the north eastern section of the wind farm site. The common land concerned is in the area of Esgair y Maes, Ffridd Goch and Boncyn y Llwyn.
232. I can be briefer than might normally be the case in my submissions on this issue since the common land is not subject to any grazing or other commons rights. Nevertheless, the public has access to the common under the Countryside and Rights of Way Act 2000. Again, section 39 of the 2006 Act identifies that the matters to which you must have regard when considering a section 38 application go beyond the interests of any registered commoners into those of the neighbourhood, the public interest and 'any other matter considered to be relevant'.
233. The 'public interest' referred to in section 39 is further defined in section 39(2) and extends to matters relating to nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest.
234. Each of the section 39 matters has been covered by RWE in evidence before the inquiry, including the submitted environmental information. Since there is no contested evidence on this topic, I can incorporate without the need to say more paras 4.7 - 4.13 of the February 2014 proof of Mr Cradick on socio-economic considerations and common land.<sup>149</sup> In my view, there are no obstacles to the issue of a section 38 consent in this case.

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<sup>149</sup> RWE-SOCIOECO-POE-CRADICK-S4

**MATTERS 1-3 and the Planning Balance**

***“(1) The extent to which the proposed developments are consistent with the objectives of the Government Policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals.”***

***“The extent to which the proposed developments are consistent with policies relating to the generation of renewable energy contained within the relevant National Policy Statements for Energy Infrastructure: overarching the National Policy Statement for Energy (EN-1) July 2011 and National Policy Statement for Renewable Energy Infrastructure (EN-3) July 2011.!”***

***“(3) The extent to which the proposed developments are consistent with Welsh Government and local policies: including Planning Policy Wales, Edition 4 (2011); Technical Advice Note 8: Planning for Renewable Energy (2005); and Energy Wales: A Low Carbon Transition (2012; and Powys Unitary Development Plan (adopted March 2010).”***

235. With regard to Matter 3 I will address PPW Edition 6<sup>150</sup> February 2014 since this has superseded both Edition 4 and Edition 5. With regard to Matter 1 I have taken into account the reference by asterisk to material published by DECC.

236. Relevant planning policies at May 2013 are set out in the Statement of Common Ground agreed between the six applicants.<sup>151</sup> Mr Cradick provided an update on planning policy at May 2014 in his closing session Hearing Statement. I commend both documents without the need to rehearse any particular detail within them. I will substantially focus in these submissions on UK and Welsh policy and what I take from them in terms of the need for Carnedd Wen and the planning balance. So far as the development plan is concerned, noting what I have said concerning section 38(6) of the 1990 Act, I commend the evidence of Mr Cradick without the need to go into a lot of detail.

237. It is necessary to say something about evidence from two of the witnesses who gave policy evidence in respect of Carnedd Wen. I refer

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<sup>150</sup> RWE-PLA-03

<sup>151</sup> SOCG-POLICY-001

to the proofs of Mr Minto<sup>152</sup> on behalf of NRW and Dr Constable<sup>153</sup> on behalf of the Alliance. Mr Minto's proof is an extraordinary document. As formally amended it helps you little if at all. In particular:-

- It inadequately differentiates between the projects on which you have to report.
- Carnedd Wen is briefly discussed in paragraphs 4.3 – 4.6 along with Llanbrynmair, but Mr Minto's observations are scattergun and fail to begin to address the planning balance as one might expect from a witness from NRW at this stage.
- The habitat restoration project entirely escapes Mr Minto's attention, as it escaped Mr Campion when he gave evidence.

238. Noting that NRW has already had to correct Mr Minto's proof by email through the submission of an amended document, the information you have from Mr Minto seems to be entirely inadequate in representing the position of the statutory advisor to the Welsh Government on landscape and nature conservation issues. Indeed I would go so far as to say the Mr Minto's proof is difficult to evaluate and lacking in much of the content that might have been expected. I know that this is strong stuff, but you have the right to expect something better from NRW, and RWE have the right to expect that Carnedd Wen would be holistically assessed for its full content rather than that it should be treated simply as a wind farm.

239. I believe that you can give little or no weight to the evidence of Mr Minto. In these circumstances it would be unfair of me to note what he did have to say about the importance of the 2020 obligation on the UK Government (at least 15% of energy supply etc). I also remain a little confused about NRW's true position in relation to onshore wind, having compared Mr Minto's amended proof with para. 6.1 of NRW's closing submissions, in which an enthusiastic endorsement of the need for new capacity from onshore wind is offered.

240. Turning to the evidence of Dr Constable I am frankly not sure why the Alliance believed that his evidence might be useful. He presented a mass of statistics which take you nowhere. The siren song he sung dances around the realities of meeting the 2020 obligation, and he attempts to

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<sup>152</sup> CON-003-PLANNINGBALANCE-POE-MINTO

<sup>153</sup> ALL-CLO-POE-01

seduce you into believing that there are so many applications for onshore wind development in the system that all has to be well and no more is required.

241. The reality is represented within the 2013 Renewable Energy Roadmap update<sup>154</sup> canvassed by Mr Cradick in section 2.6 of his Hearing Statement for Closing Session. That reality I address later, but note for the moment that as at 2012 the UK sourced 4.1% of its energy requirements from renewables. There is a long way to go.
242. I believe that you should regard Dr Constable's evidence as an interesting academic exercise that does not usefully inform the judgements that have to be made here.
243. Against this background I believe that it is quite straightforward to identify the correct policy framework for the Secretary of State's decision.
244. The UK has an obligation to procure "at least 15%" of its energy supplies from renewable sources by 2020. That obligation binds Wales as part of the UK even if, which is not the case, the targets for onshore wind development in SSAs were met. In such circumstances the 15% requirement would still need to be achieved and would still support a need case for Carnedd Wen. It is worth having this backstop need case in mind to counter evidence from Dr Constable and from any source which uses statistics to urge you to believe that the need case for onshore wind is any less compelling now than it has been since and indeed before the coming into effect of the Renewable Energy Directive 2009.<sup>155</sup>
245. What I have just said is underpinned by relevant paragraphs of the Renewable Energy Roadmap update of November 2013. Paragraph 2 of the 2013 Update confirms the commitment of the UK Government to achieving the 2020 obligation and refers to challenging targets for the devolved administrations. Paragraph 13 is critical. It records the increase in percentage of energy supplies coming from renewables from 3.8% in 2011 to 4.1% in 2012. That increase of 0.3% must be set against the requirement to achieve a further 11% in the five and half years remaining to 2020. I urge you to keep in mind that that is the reality of the challenge, noting again that renewable electricity have to

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<sup>154</sup> RWE-PLA-02

<sup>155</sup> CD-COM-021

play a disproportionate role in the steps that need to be made to 2020 since transport and heat, as recorded by Mr Cradick in his closing session Hearing Statement, is not going to deliver substantially prior to 2020.

246. The need for Carnedd Wen and other developments at an EU and UK level is thus very clear. It finds suitable reflection in National Policy Statements EN-1<sup>156</sup> and EN-3<sup>157</sup>. These documents were issued by the current UK Government and with the authority of Parliament. The importance of these documents, and of National Policy Statement EN-5<sup>158</sup> in relation to the grid, are well articulated in the May 2013 Statement of Common Ground. In particular:-

- In the context of the obligation to source at least 15% of energy from renewable sources by 2020, EN-1 states a presumption in favour of granting consents to energy NSIPs. That the presumption is subject to matters including the need for benefits to outweigh impacts does not take away from the fact of the presumption, the first in the UK planning system for many years.
- The weight to be given to National Policy Statements was articulated by the Secretary of State in the October 2012 decision under section 36 of the 1989 Act in relation to Lostock Power Station. The relevant passage is quoted in paragraph 2.9 of the May 2013 SoCG. Substantial weight was given to the relevant National Policy Statements by the Inspector in his report, and the Secretary of State endorsed the Inspector's approach.
- The need case for infrastructure projects is set out in section 3.1 of EN-1 (see para 2.12 of the May 2013 SoCG). A paragraph in EN-1 (e.g. para 3.3.10, 3.3.15 and section 3.4) press both the need for more renewable electricity capacity and the urgency of meeting that need (noting particularly paragraph 3.4.5).

247. National Policy Statement EN-3 gives specific advice on onshore wind, but that is adequately canvassed in the May 2013 SoCG, as is advice of relevance to this inquiry within NPS EN-5 concerning grid infrastructure.

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<sup>156</sup> CD-COM-001

<sup>157</sup> CD-COM-002

<sup>158</sup> CD-COM-003

248. Turning to the policies of the Welsh Government, I first refer to PPW6<sup>159</sup> issued in February 2014, but add that I find that I can adopt paras. 28-33 of the PCC closing submissions which address both PPW6 and TAN8 and their consistency with UK Government policy statements. The relevant provisions of this document are canvassed by Mr Cradick in his May 2014 Hearing Statement for the Closing Session. I refer particularly to paragraph 12.8.12 of PPW6 which stresses the continued need for delivery of onshore wind projects “in the short to medium term”. I also refer to paragraph 12.8.13 which endorses the Welsh Government’s continued preference for a Strategic Search Area approach to large scale onshore wind developments, with specific reference being made and support given to TAN 8.<sup>160</sup>
249. Next in the pecking order of policies is TAN 8 itself. PPW4<sup>161</sup> inexplicably deleted paragraph 2.5 and Table 1 from TAN 8. The Alliance argues that this removes the need to achieve any particular onshore targets in Wales. Not only is the Alliance incorrect – see below – but their argument is dangerous in terms of the objectives the Alliance itself wishes to achieve. Absent any onshore energy targets in Wales the focus would solely be on the obligation to deliver at least 15% of energy supplies from renewables by 2020, a much more substantial target bringing with it at least as strong a need case.
250. I am in no doubt that the July 2011 letter from Minister Griffiths<sup>162</sup> restores onshore wind targets to the policy framework, within a specific referenced context (being a 2GW aspiration for onshore wind capacities set out in the March 2010 Energy Policy Statement (“A Low Carbon Revolution”)).<sup>163</sup> For SSA A & B the July 2011 letter endorses a maximum capacity of 430MW. Current onshore wind (post TAN 8 2005) capacity within Area B totals 43.6MW derived from the consented or under construction capacity at Tir Gwynt and Carno B. If Carnedd Wen contributes up to 150MW and Llanbrynmair achieves its maximum of 90MW total operational wind capacity will still be only roughly 280MW, some 150MW short of Minister Griffiths’ target.

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<sup>159</sup> RWE-PLA-003

<sup>160</sup> CD-COM-016

<sup>161</sup> CD-COM-007

<sup>162</sup> CD-COM-020

<sup>163</sup> CD-COM-009

251. You will see that the figures in the previous paragraph are quite different from those on pages 476-477 of the PCC closing submissions. PCC has erroneously included pre-2005 /TAN8 projects in its table. In addition, you will doubtless be cautious in the weight that you give to not yet submitted NSIPs and at-appeal or in local planning T&CPA schemes.
252. With regard to the Interim Development Control Guidelines I adopt para. 36 of the PCC closing submissions.
253. Summarising the position in relation to the need case for Carnedd Wen it is clear that both at a UK level and in terms of July 2011 letter from Minister Griffiths there is a very strong need case for the development. And it is a development which can be achieved without a recourse to a 400KV overhead pylon line.

### **Conclusions on the Planning Balance**

254. At the start of these submissions I said that Carnedd Wen was a remarkable scheme and gave reasons for that view. I believe that I am able to submit that Carnedd Wen ticks every box in terms of:-
- Renewable energy generation
  - Progress in securing domestic security of energy supplies
  - Bringing substantial local economic benefits
  - Bringing landscape benefits through the habitat restoration programme
  - Bringing biodiversity benefits of significance at a national level
  - Bringing benefits in terms of public access to the countryside.
255. Against these benefits there have to be set the visual impacts of the wind turbine element of the development on the Snowdonia National Park and the issue of the Carnedd Wen 5. In this respect I believe that you can fairly conclude that:-
- TAN 8 and the 2012 Aecom study<sup>164</sup> for PCC clearly concluded that the area of Carnedd Wen was appropriate in landscape terms for large scale wind energy development. Landscape and

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<sup>164</sup> CD-RWE-PLA-001

visual impacts on the National Park were taken into account in reaching this conclusion, an important factor in your deliberations.

- The evidence of Mr Stevenson is that there will be no significant offence, if offence there is at all, to the statutory purposes of the National Park as set out in the Environment Act 1995.<sup>165</sup> There is the potential for some effect on Special Quality 5, but again on the evidence of Mr Stevenson such effects do not amount to any significant harm.
- Such benefits as there may be in 'thinning out' the turbines in the north-east part of the proposed wind farm through the removal of the Carnedd Wen five are clearly outweighed by the need for the capacity they represent.

256. Thus in my view Carnedd Wen should present you with no major challenges in terms of recommending that section 36 consent and deemed planning permission should be granted, and I ask you to so recommend to the Secretary of State.

**Marcus Trinick QC**  
**Eversheds LLP**  
**29 May 2014**

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<sup>165</sup> CD-VATT-LEG-005