YDCW CPRW Elusen Cefn Gwlad Cymru
The Welsh Countryside Charity

**CPRW submission to BUTE ENERGY. Nant Mithil Energy Park. Statutory Public Consultation.** (*24/6/24*)

## OVERVIEW.

CPRW considers that the public have been short-changed in this consultation. We submit three expert reports (see p8). In this response we concentrate on general points:

- Projects which contribute to major cumulative impacts have been scoped out.
- Detailed investigations to assess ecological impacts, together with critical details of final site-layout and construction options, have been postponed until after consent is secured.
- There can be no valid assessment of Net Biodiversity Benefit (NBB) if the adverse impacts, including cumulative impacts, as they apply to this unique project, are not described in full.
- The site has numerous constraints such that too many significant impacts are unavoidable.
- Critical information and assessments are omitted from the Environmental Statement.
- Major adverse environmental impacts are consistently dragged down below the threshold of significance.
- There are discrepancies in the dimensions of turbine parts, making it impossible to assess the mitigation measures.

Postponing further information and investigations until post-consent makes environmental safeguarding insecure. CPRW has observed this at nearby Hendy Wind Farm (related to Bute via an ex-director). For Nant Mithil, Powys County Council (PCC) will have the planning-decision role for Discharge of Conditions[1] and will rely on advice from Natural Resources Wales (NRW) for matters within the NRW planning remit[2]. Both statutory bodies are suffering from lack of resources and are already struggling to fulfil all their duties in the public interest[3]. The number of large infrastructure projects coming forward in Powys alone (see: DNS/PEDW website and Bute portfolio) is bound to exacerbate these deficits.

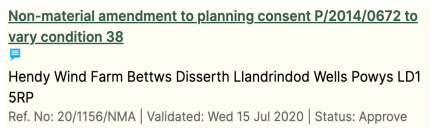
An ecological example from Hendy Wind Farm illustrates the problems. Both PCC and NRW must be satisfied with the Bat Protection Plan. Post consent, and throughout construction, the developer's lawyer, acting as applicant for Discharge of Conditions, spread confusion through multiple Non-Material Amendment (NMA) applications to weaken difficult Conditions or delay their discharge. The Powys Planning Website[4] shows the **second** NMA **and** the related Condition 38a still not discharged today even though all on-site construction was completed in 2021. Neither NRW nor PCC has found it "expedient" to enforce against construction or insist on full details of Bat Protection despite the Welsh

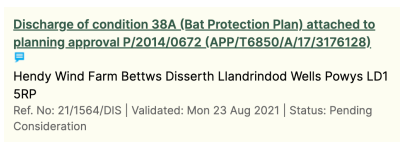
[1] Powys CC has failed to enforce against breach of many Hendy Wind Farm Conditions. For example, Condition 50 states: "No development shall commence until planning permission, as required, has been granted for all stages of the grid connection from the substation to the National Grid". And yet development started in 2018 and an application for an entirely new substation near Howey (separate from the necessary on-site substation for the turbines) was submitted in July 2023 (23/1115/FUL), six years after development started and two years after it was completed but standing idle without a grid connection.

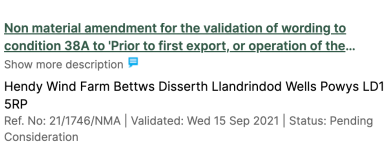
[2] NRW lacks resources to cover all its duties. For example, in September 2023, NRW made a submission concerning another energy park DNS, also involving Bute Energy, at Twyn Hywel near Caerphilly, stating: "Please note, we have not been able to provide advice on ornithological matters within the specified timescales, due to resourcing issues"(Nation Cymru). There is already an example in the documentation for this project. Appendix 2.2 p10. "*Q10.5:* Unfortunately, we are currently unable to provide comments from our NRW Peat Specialists".

[3] see Audit Wales Review of Powys Planning

[4]




(screenshots 24/6/24)

Government Planning Inspector's clear wording in 2018: "*No development shall commence until a Bat Protection Plan has been submitted to and approved in writing by the Local Planning Authority*".

## 1. DOCUMENTATION

The idiosyncratic presentation of an ES, in numerous oddly labelled documents drawn from separate Volumes, under Chapter Headings is frustrating. The "confidential" Ecological Desk Top Survey (7.1) is an important public document required to explain the field survey design and verify a diligent search for information. Any sensitive breeding sites could easily be redacted but Bute have refused to release 7.1. An example illustrates why the desk-top study is important for transparency. We believe the search failed to uncover the starling roost and raptor recordings on Llandegely Rhos, well-known to county recorders. The roost is used daily over winter by tens of thousands of birds arriving from all directions. The Bute surveys only recorded starling on one occasion and dismissed the entire wintering bird assembly as of low NCI, therefore we question whether the design and extent of later surveys were informed by diligent research into existing data. There can be no justification for entirely preventing the public from considering the desk top survey and it is contrary to law to prevent the public from being able to consider or comment on any of this information.

**The ES submitted to PEDW must be better organised and include the Ecology Desk-Top survey to allow adequate public comment at this consultation stage.**

## 2. SITE SELECTION

We note that the first two site selection criteria are wind resource and landownership agreements in place (Ch 3 3.9). These agreements were facilitated by historical connection between the Hendy and Nant Mithil (then known as Fron Goch) projects dating back to 2018.

This site is far from an undifferentiated expanse of upland plateau: it is a relatively small hilly upland with steep, incised flanks, three SAMs, an overlapping SSSI, a network of PRoWs, a mixture of habitats and populations of protected species, surrounded by individual properties and small communities in cherished countryside. The developer has evidently struggled to achieve the crowded layout due to the tension between the multiple constraints set out in Future Wales Policy 18 and financial profit.

The minimum turbine separation appears to be just over 3 rotor-diameters which is a very tight minimum given that industry recommendations are often for much greater multiples, particularly when there is no suitable terrain for ordered rows.

The presentation of site selection in Chapter 3 is not convincing as a chronological account. The iterations are difficult to follow, made worse by renumbering of turbines. Only some are illustrated. Only the final one shows infrastructure. V6 appears in an insert labelled 7-8: there is no layout given for V7-8, Turbine 38 still figures in the account of the final 31-turbine layout and the "4-track option" insert only shows three. All this gives a distinct impression of ex-post facto justification for arriving at the maximum number of turbines no matter what the challenges.

**We need numbered, dated, illustrated iterations with clear reasons for each specific change.**

## 1. CUMULATIVE IMPACTS

### 3.1 Cumulative impacts with other DNS Projects (Chapter 2: Scoping Response Table) - Failure to Comply with Scoping Direction

In a Scoping Response dated 13/1/2023, PEDW directed the applicant to NSIP Advice Note 17
"*The Planning Inspectorate's guidance for Nationally Significant Infrastructure Projects – Advice Note 17: Cumulative Effects Assessment sets out a staged process for assessing cumulative impacts which the*

*Applicant should follow when preparing the list of projects for inclusion in the ES; the Applicant should ensure that relevant schemes identified are addressed in the ES using the tiered approach set out in Advice Note 17. Best practice is to include proportionate information relating to projects that are not yet consented, dependent on the level of certainty of them coming forward*"

In an earlier Scoping Response dated 9/12/2022 the Welsh Government – Soil, Peatland & Agricultural Land Use Planning Unit (WG SPA) said "*The Department consider that it is appropriate to include applications for DNS/CAS-01928-W3M9S8 – Rhiwlas Energy Park - and DNS/CAS-01927-F0T2T1 – Banc Du Energy Park - in the cumulative assessment*."

NSIP advice note 17 says:

> Overarching NPS for Energy (EN-1) paragraph 4.2.5 states that "When considering cumulative effects, the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence)". For the purposes of this Advice Note, 'other existing development and/or approved development' is taken to include existing developments and existing plans and projects that are 'reasonably foreseeable'.

The applicant says, in response to PEDW's request:
"*In accordance with the Planning Inspectorate's guidance for Nationally Significant Infrastructure Projects –Advice Note 17: Cumulative Effects Assessment, a staged process for assessing schemes has been adopted. Likely cumulative effects have been defined as the likely effects that the Proposed Development may have in combination with other wind and relevant solar schemes which are at application stage, consented, under construction or operational (i.e. the incremental effects resulting from the Proposed Development if all other wind and relevant solar schemes are assumed to be constructed/operational).*"

In response to the WG Soil, Peatland & Agricultural Land Use Planning Unit Scoping Direction, Bute says: "*DNS/CAS-01928-W3M9S8 – Rhiwlas Energy Park and DNS/CAS-01927-F0T2T1 – Banc Du Energy Park have been scoped out of the cumulative assessment as they are not yet at application stage (at the time of the cut-off date for cumulative data collection for this ES, set at 19th December 2023. This cut-off date was set to allow time for the assessments, visualisations and figures to be prepared*)"

The applicant has chosen to selectively quote from NSIP Advice Note 17 and to exclude all development not subject to a Planning Application by 19/12/23. Ch2-81 says it will be up to later applicants to scope in Nant Mithil. This is contrary to the WG Soil, Peatland & Agricultural Land Use Planning Unit response which deemed it appropriate to include relevant projects before the full applications had been submitted. There are three more DNS projects far closer than Rhiwlas or Bank Du.

Bute Energy & GreenGEN energy have received PEDW Scoping Directions for Bryn Gilwern Energy Park (Scoping Request 11/12/23), Aberedw Energy Park (Scoping Request 11/12/23), the GreenGEN Towi-Usk line (Scoping Request 23/10/23), Banc Du Energy Park (Scoping Request 18/7/22), and Rhwilas Energy Park (Scoping Request 18/7/22), all five of which are "*reasonably forseeable*", given that in each case the (same) developer has published a public website promoting and describing the project and providing project documentation. There can be no pleading about insufficient knowledge about the projects and it would be clearly artificial to argue that these projects have not reached a sufficiently advanced stage to assess (where certain matters relating to e.g. siting have not been finalised in each case, clearly some information is available). If plans are still not

completely defined, the law is clear that an assessment must still be undertaken "at the earliest possible stage" based on current information, even if this is higher-level than may be possible later.

In any event, Aberedw, Bryn Gilwern and the Towi-Usk line are all advanced in development with full Applications anticipated in 2025. The projects are in close proximity, with large turbines on adjacent hill tops and tall pylon-lines (possibly with some poles) in the valleys. Nant Mithil Energy Park depends directly on the construction of the GreenGEN Towi-Usk line. GreenGEN advertises that this line will serve all three wind projects. These projects have significant cumulative impacts with Nant Mithil right across the Environmental Statement topics including, but not limited to, landscape, residential amenity, ecology, noise and appreciation of the historic environment. All four have significant impacts on the highly sensitive Wye SAC.

Bute leaves no doubt that these projects are intinsically related and will come forward: see https://www.greengentowyusk.com/index.php?contentid=13 (consulted 15/6/24)


**What does the project involve?**

Green GEN Towy Usk will connect Bute Energy's proposed Nant Mithil Energy Park to the National Transmission System.

In order to do this, we are proposing a new 132kV (132,000-volt) connection, approximately 97 kilometres in length between a substation in Bute Energy's Nant Mithil Energy Park and a new substation, to be developed by National Grid Electricity Transmission, on the existing 400kV (400,000-volt) transmission line near Llandyfaelog, in Carmarthenshire.

Bute Energy's proposed Aberedw and Bryn Gilwern Energy Parks, which are at an earlier stage of development, will also connect to Green GEN Towy Usk, via the same proposed switching station, reducing the need for individual connections from each of the energy parks to the National Transmission System.

Bute energy has deliberately ignored PEDW direction in stating that the draft Nant Mithil ES is ready for determination as it stands:

**2.8** This ES presents the written output of the EIA process. The information contained in this ES fulfils the requirements of the EIA Regulations and once submitted will enable the decision-making authority, in this case the Welsh Ministers, to make a decision on the application for planning permission.

**CPRW considers that the refusal to follow the Welsh Government scoping direction on cumulative impacts and the failure to inform the public of the full cumulative environmental impacts makes the Statutory Public Consultation process (May to June 2024) unfit for purpose. It should be rescheduled when the relevant information has been incorporated into a revised draft ES.**

**3.2 Cumulative Impacts of access to the site.**

Two Access points are proposed with the explicit intention of getting consent for both, but with the notion (with no guarantee) of only developing one. PEDW asks for the extent of off-site works to accommodate AILs to be known. The Welsh Government Strategic Road Network asks for environmental impacts on SRN soft estate to be known. Bute wishes to explore impacts of transport to the site post-consent and post turbine selection saying that the AIL delivery route will be subject to approval via a separate application.

**CPRW considers that the cumulative environmental impacts of the road transport arrangements, the development of an immediate access area to the site from the A44 and the remainder of the Wind Energy Park development should be described in the ES. We do not know that the "separate application" will require an ES, and in any event the proposed entrance is clearly an integral part of**

**this project and must be assessed; see R(Ashchurch Parish Council) v Tewkesbury Borough Council, [2023] EWCA Civ 101.**

### 3.4 Cumulative impacts of Noise, Shadow Flicker and Aviation lighting

ETSU-R-97 was drawn up for turbines less than half this size and update is long overdue. Taller and more crowded turbines may increase the distressing experiences of amplitude modulation, (AM), see for instance: https://www.wsp.com/en-gb/insights/wind-turbine-noise-report. The Nant Mithil turbines are as close to residential properties as turbines half the size in smaller wind farms were a decade ago. We have never seen onshore turbines this size in Wales and cannot draw on experience. Where is the precautionary principle?

People in quiet country areas who may be already suffering from loss of visual amenity, shadow flicker and noise will also be disturbed by lighting at night flickering with rotation of intervening blades. In addition to the cumulative impacts with Hendy there will be cumulative impacts for residents sandwiched between Nant Mithil and Bryn Gilwern and disturbance from aviation lighting over a huge area, including Presteigne's newly designated Dark Sky area.

**CPRW considers that the thresholds and buffers for noise disturbance should be reviewed for likelihood of AM disturbance and the assessment of noise, shadow flicker and aviation lighting and reassessed to include cumulative impacts from Bryn Gilwern and Aberedw Hill.**

### 3.5. Interrelated Cumulative Impacts

This non-sensical assessment is determined by how the information is laid out in chapters (often contrary to convention) and by which aspects that Bute has neglected to cover or has scoped out. Mitigation of one adverse impact may result in increase of another. Bute has neglected to cover the significant visual impact of black blades on ten turbines in the visual assessment in Chapter 5. There are numerous examples of simply ignoring cumulative impacts which are bound to occur in practice. Why, for instance, aren't PRoW users affected by shadow flicker? Why aren't populations of protected species threatened by habitat loss and noise and collision? Why aren't residents affected by loss of favourite countryside walks in addition to noise, visual disturbance, health impacts, traffic problems and possible loss of tourist income? We know that many people move away from wind farms because of these cumulative impacts suggesting that they do add up to make residences unpleasant places to live.

## 4. SITE AND LAYOUT

### 4.1 Turbine size.

There appear to be significant discrepancies between different documents as relates to turbine size which make it difficult or impossible to fully understand the potential impacts of the proposal. Note that the Telecommunications version does not give blade length: the Transport version has a maximum blade length of 81.5m and the ES version, which should be the correct one, has a discrepancy between rotor diameter and blade length for the medium 205m turbine.

**Appendix 10.2 Transport**

**Table 1 Turbine Component Dimensions**

| Component | Length (m) | Width (m) | Height/Min Diameter (m) | Weight (t) |
|---|---|---|---|---|
| Blade | 81.500 | 4.600 | 4.000 | 27.100 |
| Worst Case Tower | 30.000 | 4.800 | 4.800 | TBC |

**Telecommunications Impact Assessment (2.4- 2.2)**

| Hub Heights (m agl) | Rotor Diameters (m) | Tip Heights (m agl) |
|---|---|---|
| 113.5 / 130.5 / 145.5 | 158 / 163 / 163 | 180 / 205 / 220 |

**DAS fig 3, Ch 4. & Ch4 Fig 4.2**

| Tip Height (m) | Rotor diameter (m) | Blade Length (m) | Hub Height (m) |
|---|---|---|---|
| 180 | 155 | 76 | 113.5 |
| 205 | 155 | 79.7 | 130.5 |
| 220 | 163 | 79.7 | 145.5 |

- The 130.5m hub has either a 163m rotor diameter or a 155m rotor diameter. Which?
- Hub + blade length exceeds the tip height by 9.5 m for the smallest turbine but only just over 5m for medium and large ones. Can this be right? Where does the centre of the rotor and swept area sit in relation to hub height? We need the height of the pivot point (centre of the swept area) and the blade-length as well as ground slope to calculate buffers for protected species.

These questions are important because 24 of the 31 turbines are 205m to tip yet we don't know the blade length. Fig 4.2, "*for illustrative purposes only*" and does not even show the commonest 205m tip-height model turbine. There should be a 1.1 x turbine height set-back from the site boundary and a strict 50m blade-tip to vegetation buffer for bats. From the various Figures and turbine measurements presented, turbine blades could over-sail the SSSI boundary and the site boundary and may not provide adequate buffers for bat foraging.

**The ES must be revised with sensible turbine measurements and a clear account of separations and buffers shown at sufficient scale to be properly verified by the reader.**

**4.2 <u>Infrastructure Works on site:</u>**

This 31-turbine wind farm using unprecedented turbine sizes is sited on challenging terrain with very steep inclines which must be at the limit for feasible turbine-parts transport, but the ES layout offers the very minimum of site-specific information for the infrastructure groundworks. There are block estimates and the ES figures are too small-scale to interpret. In addition to the hardstanding for turbine foundations, crane-pads, substation and construction compounds, there are 26+Km of 5.5m wide on-site access tracks with 6m or 10m margin for SUDS and cables, plus extra land-take for bends, passing places, junctions, and cut-and-fill throughout the site. There are 11 water crossings with almost no details of engineering solutions, including cut-and-fill and buffers. We have no site-specific details or quantification of habitat loss and soil movement.

We have witnessed wind-farm construction on other sites, including at Bryn Blaen (hill-top) and Hendy (landscape bowl) and we have seen erosion, landslips, borrow-pit extraction, soil heaps, mud-baths, water runoff, private water supply pollution, and extensive cut-and-fill operations. This is what happens in real life construction in Mid-Wales. The watercourses on the Nant Mithil site all drain into the Wye SAC which is already severely impacted by upland soil erosion. Post-consent information in the form of conditioned plans will be too late for EIA compliance and do not allow proper scrutiny of the plans and consideration of whether the proposed mitigation will be effective.

**An ES must provide more site-specific detail and quantification of groundworks, land-take and soil movement together with engineering assessments. CPRW believes that the construction would result in negative Net Benefit for Biodiversity (NBB), particularly taking the vulnerability of the Wye SAC and all cumulative ecological impacts of other Bute developments into account. The information provided is insufficient to inform an NBB calculation, as required by PPW12, and the ES should be revised accordingly.**

**4.3 Impacts on operations phase of PRoWs (Chapter 2.2)**

The ES says Public Rights of Way are considered in Ch 10 which includes: "Potential effects (of changes in traffic flows) on the Public Right of Ways (PRoWs) within the Site"

The Developer response to the Scoping Direction on PRoWs says:
"Details of the PRoWs which are located within the Site are shown and listed in **Appendix 10.1**. The PRoWs located within the Site are included as part of the assessment within this Chapter during the construction phase and operational phases of the Proposed Development." But the operational phase has been scoped out: "While the operational phase is scoped out, it should be noted that any necessary permanent diversions to the PRoW network will be discussed and agreed with PCC. This is outlined in a PMP, the content of which is outlined within the **Proposed Mitigation (Additional Mitigation) and Compensation** section of this chapter**."**

There are no direct responses to PCC's scoping comments, no site-specific construction arrangements and no comments on impacts on Common Land. The Bute responses explain that turbines can't be sited topple-distance from PRoWs and both temporary and permanent diversions will be discussed with Powys County Council and made subject to a post-consent Path Management Plan. Reference is made to mitigation of the effects of simultaneous development of other sites. However, we have already seen that the relevant Bute sites have been scoped out.

The plan of existing PRoWs in relation to turbine layout Fig 4.14 shows the complexity of infrastructure overlap and crossings with PRoWs. The Green Infrastructure Statement plan (p22) is impossible to follow. The impact on PRoWs is concealed from the public.

**CPRW considers that impact on the PRoW network should be scoped in, properly described with details of mitigation and fully addressed in the ES so that it is available for public scrutiny and comment. It is not possible to sensibly or adequately comment on these impacts without further information.**

**5. DECCA HIERARCHY and MITIGATION**

The ES is peppered with wording such as "if feasible", "where possible", with some avoidance measures declared impossible. We are not told anything about the accounting system underlying these assessments (e.g. "impossible without reducing the number of turbines").

Ordinary "best practice" techniques to avoid unnecessary environmental damage are claimed as "mitigation" where these should be baseline assumptions. Every other "mitigation" summarised in Ch 15 is in the form of future Plans (the HMP, CEMP, PMP, TMP etc. etc.) subject to "suitably worded Planning Condition". All these come too late for the public to comment or the decision-maker to consider in the planning balance. The Planning Inspector at the Hendy Appeal said he was satisfied that Planning Conditions would guarantee protection against inoperative turbines. In his Appropriate Assessment, he said that Planning Conditions would avoid ecological damage to the Wye SAC and protected species. Little did he know how these Conditions would be manipulated and disregarded.

In any event, to suggest that mitigation measures will be left to future stages during which no public consultation is required is contrary to the requirements of EIA including the requirement that the public be given an adequate opportunity to comment on this proposal at this stage.

**CPRW considers the measures to be required by any Plans drawn up post-consent and by legal agreements should all be fully described in the ES as they apply to the specific development and site conditions. The robustness of these measures should be discussed. We do not believe that the type of "outline" Consent sought is any guarantee of environmental safeguarding. Nor is it sufficient to**

**meet the legal requirements of the Habitats Directive, the EIA Regulations or to allow assessment of NBB.**

## 6. SECONDARY CONSENTS

Common land s16 (Deregister and Exchange) application form Section B3, Q20, refers to note 8 which reads:

**Note 8**

The public has a right of access to almost all registered common land (by virtue of the Countryside and Rights of Way Act 2000), and town or village greens are by definition subject to access by local inhabitants. We would not expect to see the stock of public access land diminished by an offer of replacement land that was already subject to some form of public access. An exception to this assumption might be where the proposed exchange land, whilst being open to non-statutory public access, might be under threat of development, and its registration as common land would protect it for the future as well as securing permanent, statutory public access.

Parcels 2 and 3 of the proposed replacement land are designated as Open Country which has a statutory right of open access on foot, (CROW Act 2000). How do these two parcels comply with the expectation in Note 8 above? The form has Q20 "no" box ticked, it also cites the wrong community and omits affected bridleways.

Common land s38 (construction) application fails to describe ditches, trenches and embankments and how fences will affect bridleways.

The Pre-application Consultation Common Land Report fails to recognize that bridleways cross the common land and three of these will be affected by the common land proposals. This failure is compounded by the overall lack of regard for equestrians in the ES. Horse riders have no rights to stray beyond a bridleway/BOAT,

**These documents should be amended accordingly with suitable mitigation included and then consultation undertaken again with the full and proper information included.**

END.

Contact:

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**ATTACHED DOCUMENTS**

**1.Ecology Report. Bioscan** (Dominic Woodfield)

- Advice letter
- Schedule

**2.Landscape and Visual Amenity Report. EIS** (Geoffrey Sinclair)

**3. Built Heritage Report.** (Christopher Welch)