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BY E-MAIL ONLY

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Dear both

Nant Mithil proposed wind farm – review of ecology components of EIA

Further to our introductory discussions and your subsequent instruction, I have now reviewed the EIA documentation published on the Nant Mithil Energy Park website and, as you know, was able to complete a brief visit to parts of the site on Tuesday 18th June. I have also now reviewed the confidential information latterly released to me by Bute Energy. I set out the headline issues that I have identified below and attach a more comprehensive ‘Scott Schedule’ of particularised concerns, flaws and points of contention, cross referenced to specific sections within ES Chapters 7 and 8, and the OHMP.

Elements of the baseline surveys that support the EIA have been executed adequately or even in some cases well. However there appear to be misclassifications of habitats that call into question the presentation of quantitative calculations of the amount of Section 7 habitat that will be affected, and some features of higher value appear to have been overlooked entirely. There are also significant and inexplicable deficiencies in the approaches taken to establishing a robust baseline for assessment with regard to certain legally protected taxa (reptiles, white clawed crayfish and salmonids), and these represent a departure not only from good practice standards, but also from principles that have been long established and laid down by relevant case law, and which are reflected in TAN5. Perhaps the most significant omission in this respect is the absence of any survey work for the European Protected Species white clawed crayfish, despite the acknowledgement that habitat is present that is suitable for it in the tributary streams on and immediately downstream of the site. As a European Protected Species, there is a suite of long-standing case law applicable that has firmly established that it is not a robust approach to defer matters such as presence or absence and/or the extent to which it may be affected by the proposed development, to a post-determination condition. Yet that is precisely what the applicant seeks to do here. The seriousness of this omission is amplified by the fact, again acknowledged by the applicant, that any white clawed crayfish populations at risk of negative effects from this development are likely, to a greater or lesser extent, to be functionally linked to the populations underpinning the downstream River Wye SAC, thus providing a vector of potentially significant effect on the integrity of that internationally important site itself. The omission is rendered all the more surprising given that the clear indication of the Aquatic Habitat Assessment Report (Vol 3, Appendix 7.9) is that such surveys ought to be carried out – indeed that report goes further and suggests that wider scope macro-invertebrate surveys should be carried out. If such surveys are not carried out prior to submission and/or determination, consultees and the Welsh Ministers will be unsighted on a suite of relevant questions and material considerations – for example are there (as the applicant expects) white clawed crayfish in the site streams? Are they present immediately downstream of the site streams? Are these populations locally or regionally significant? Are they linked to the downstream SAC? To what extent might they be important in maintaining the integrity of the SAC? And so on.

This significant failure to even attempt to provide relevant and important information in the ES is not ameliorated by the applicant’s rather nebulous and fudged listing of standard form mitigation. There is a clear inconsistency between

the approach taken in Chapter 8, which follows CIEEM Guidelines in assuming good industry standard practices are followed as a matter of course, and in Chapter 7, which seeks to elevate such standard practice to the status of bespoke or additional mitigation – apparently in an attempt to be seen to be doing *something* about the significant risk posed to water quality and aquatic fauna in and downstream of the site's watercourses during the construction phase. A visit to the site or even a glance at the contours on any number of the maps submitted with the ES shows that upholding water quality where track crossings are proposed to be constructed across steeply incised watercourses is going to be a major challenge, and thereby a major impact risk. I have empirical experience of the realities of wind farm track and turbine construction on such challenging terrain, and you have also shown me photographs taken at the nearby Hendy wind farm that chime with my experiences of the reality of wind farm construction. Scant detail is provided on how these risks are intended to be managed or mitigated, beyond nebulous references to a CEMP, and a large measure of emphasis placed on future riparian planting which (even if implementable) will not have a mitigating effect during the critical construction phase in any event. In some instances, such planting may not be desirable in any event.

Chapter 8 (ornithology) also suffers from significant deficiencies, again as elaborated upon in the attached schedule. The claim that the site received adequate coverage during the breeding birds and winter walkover surveys is shown to be very unlikely to be correct by a simple extrapolative analysis of what is actually achievable in the time stated to have been allocated to the task. The wholesale reliance on Brown and Shepherd method is challengeable in any event, given that significant areas of the site in the west comprise enclosed farmland, and in the east there are extensive areas of plantation. These methodological issues may be implicated in some of the more surprising results obtained. For just one example, on my brief site visit on 18th June I noted multiple parties of crossbill (Schedule 1 species) using the spruce plantations in the SE of the site, including those that will be subject to impacts. Yet the ES only records one record of this specially protected species over the entirety of the surveys carried out. The ES itself acknowledges that more intensive survey effort of the plantations affected by the scheme should have been triggered by the presence of this species.

In terms of interpretation of the ornithological results, there is due recognition of a likely significant effect from collision mortality on the local and regional populations of red kite, but the assessment of long-term population viability impacts suffers from a lack of consideration of population sink/ecological trap effects and there is naïve reliance on what are frankly hopeless land management measures to try and make something of a case that such impacts can and will be ameliorated. The measures are innately ineffectual and hopeless for various intrinsic reasons, but rendered further so in the absence of any assurance that the management of the site would ever really be subject to the changes the EIA seeks to rely upon (see comments on the OHMP below). There are also methodological issues – particularly in relation to the timing of some surveys and the reliance on methods designed for upland waders. Collision risk impacts on nightjar – notwithstanding proximity to known territories and the intention to keyhole turbine locations into forestry - are not addressed at all on the basis that the assessors have no data on nocturnal flight patterns. This 'absence of evidence equals evidence of absence' (of an effect) approach does not pass any sort of muster in terms of EIA guidance and leaves a large stone unturned in determining the likely significant effects of this scheme on ornithological receptors.

Finally, at least for now, there is the Outline Habitat Management Plan (OHMP) which is presented as something of a panacea for most of the habitat and terrestrial species impacts, and a large measure of the ornithological and bat ones. As we have discussed, I do not disagree that the legacy of overgrazing and agricultural improvement of large parts of these upland and upland fringes presents an opportunity to improve habitat condition – and conditions for a range of associated species - by implementing a conservation-based grazing scheme that substantially reduces LU/ha, removes inputs/stops reseeding and ideally also switches stock type for at least the life of the wind farm. But what shines through from the OHMP and the repeated references to it as mitigation and compensation in ES Chapters 7 and 8, is no conviction whatsoever that what is presented in nebulous form in the OHMP will be implemented in reality. Indeed, the OHMP is cloaked in caveats such as 'subject to landowner buy in' leaving perhaps the most critical piece of the jigsaw as an unknown. That is before one gets into the problems imposed by commons legislation on parts of the site. Consequently, and I cannot emphasise this enough, I consider that no weight can be attached to the

OHMP generally – even before one gets into its detailed prescriptions which are variously scant, nebulous or likely ineffective. In the absence of any such weight, the assessed and unassessed net negative impacts of the scheme, on red kite, on other birds, on bats, on heathland, mire, riparian and acid grassland habitats, on a suite of other species and potentially (by means of white clawed crayfish and other functional linkages), to the River Wye SAC, can only render the scheme unacceptable in planning policy terms.

I hope the above and the attached provide an appreciation of the main issues identified from my review. I suggest you include this letter and attachment with your response to the consultation.

Best regards

A handwritten signature in black ink, appearing to read 'D Woodfield', written in a cursive style.

Dominic Woodfield CEcol CEnv MCIEEM
Director