Cyfoeth Naturiol Cymru
Natural Resources Wales

Official – Sensitive (Restricted Commercial)

Submission to Welsh Ministers for consent to enter into a non-exclusive Right of Access for an onshore energy development on neighbouring land via an arrangement Under Section 83 of the Government of Wales Act 2006

Hirfynydd – Information Redacted.

Issue

The Natural Resources Body for Wales (referred to hereafter as 'Natural Resources Wales' (NRW)) seeks approval from the Welsh Ministers to grant a non-exclusive right of access with a Developer, **Information Redacted**. This is a simple Third-Party Access (TPA) request. There will be no windfarm infrastructure located on the Welsh Government Woodland Estate (WGWE).

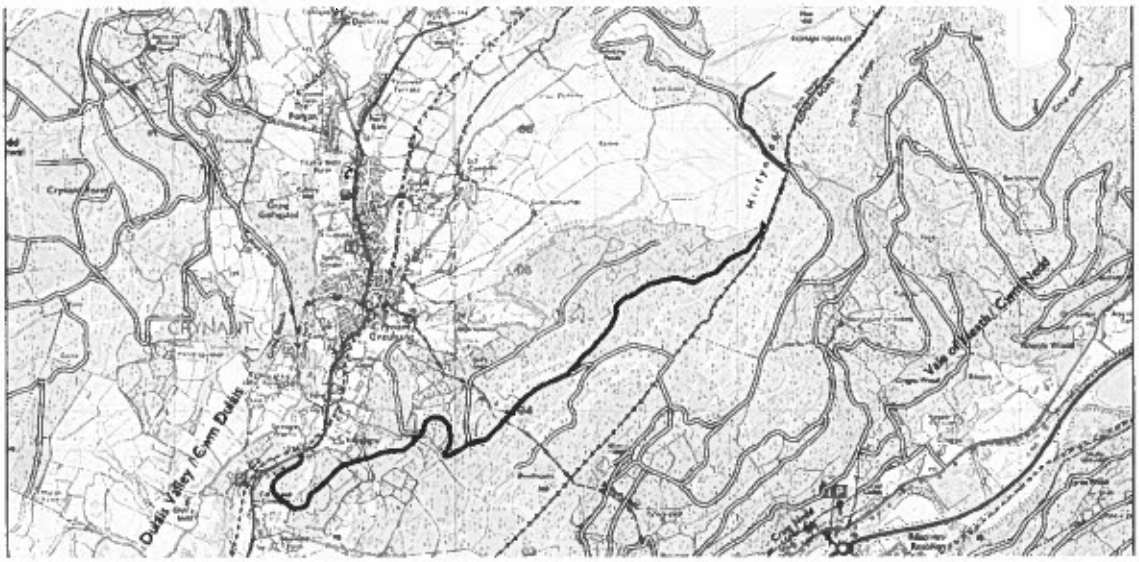
NRW's 2023 remit letter from the Welsh Government sets out the following priority under the theme of energy:

Work in partnership with the Renewable Energy Developer Programme and support the Welsh Government, public bodies and community groups on the expansion of renewable energy generation projects on the Welsh Government Woodland Estate (WGWE).

The access is required by **Information Redacted** for their Hirfynydd Energy Park. **Information Redacted**.

The access route is through the Crynant Forest. The access route would enter the forest via the Crynant East Forest entrance off the A4109 and then follow existing forest roads (marked blue in Fig 1). A small section of new road (marked red in Fig 1) would be required at Nant Cafn.

Figure 1: Access Route through NRW managed land



I Pursuant to an agreement dated 21 December 2023 made between Natural Resources Wales (NRW) and the Welsh Ministers under Section 83 (s.83) of the Government of Wales Act 2006:

any proposal for a disposal of land for the construction of a Windfarm requires the prior written approval of the Welsh Ministers which NRBW shall request by ministerial submission at an appropriate stage, prior to a planning application being made by the developer.

Land Use and any alternate uses considered

It is likely that some tree felling at key locations would be required, particularly around the sharp bends on the lower sections of the access route and to construct a new track across Nant Cafn. We have calculated this to add up to around 4ha. We will keep tree loss to a minimum, compensation will be paid for any trees removed and a Compensatory planting payment will be made to create new woodland for any areas permanently cleared. A Tree Felling plan will be agreed with NRW prior to the commencement of works to ensure UKWAS compliance.

Developer and Partnership Working

NRW is limited in its ability to work in direct partnerships on energy projects. Currently, NRW does not have the powers to generate electricity and therefore cannot own and operate wind farms, nor own shares in any company that owns and operates wind farms. Should NRW enter into such an arrangement it could be challenged as acting *ultra vires*. NRW is requesting to grant the developer a non-exclusive right of access over NRW managed land. There will be no partnership working.

Project Value and Timescales

Redacted information

Indicative Timeline is 2024 – 2028, across the following Stages:

- Stage 1 Project Initiation 2023 - 2024
- Stage 2 Planning Submission 2024
- Stage 3 Construction to Operation 2027 - 2028

Timing

Immediate so that NRW can proceed with concluding the legal agreement and the Developer can proceed with the planning application submission.

Governance

The Land and Property Consultation (LPC) for the Project was signed off in accordance with NRW's Managing Our Money (MoM) and Statutory and Legal Scheme (SaLS) governance processes. **Information Redacted**, approval under MoM is at the level of Executive Director of Finance and Corporate Services and Chief Executive in consultation with the Principal Surveyor and NRW Finance Committee (or Board for s.83 requests). The Disposal Report was signed off by the Principal Surveyor on 19th April 2024 and the NRW Board 17th July 2024 as per MoM.

The approval to submit this s.83 request has been approved by Head of Operations for South West Wales and Head of Sustainable Commercial Development in line with the Statutory and Legal Scheme (SaLS) on 7 February 2024 and 5 March 2024 respectively.

A Section 83 Submission was drafted in April 2024 and NRW's Executive Team approved the drafted s.83 Submission on 28th May 2024 and the NRW Board on 17th July 2024, prior to submission to Welsh Government.

The proposal will be delivered by the Commercial Development Team (Communications, Customer and Commercial Directorate) up to the signing of the Option Agreement. The Project will then be handed over to the Commercial Delivery Team South (Operations Directorate) for managing the access and any other issues over the period of the lease.

Risk and Due Diligence

At this stage in this Project the main risks are:

If NRW / WG fails to sanction this s.83 Submission timeously ***THEN*** a: NRW / WG could be seen as not supporting renewable energy investment in Wales which could be seen as contrary to meeting Welsh Government's own targets; and

b: NRW / WG could be seen as not encouraging investment and job creation in Wales, especially by a Welsh-owned company.

c: Site-based risks: developing energy projects on the forest estate creates interface risks with other land management objectives such as interruption to planned forestry operations, introduction of additional constraints to the forest, and interfaces with public access. These risks are mitigated and managed through close consultation with place-based teams, clear legal agreements and close working relationships with developers.

d: **Information Redacted** will also require access along the same route for their Nedd Tawe proposal.

The proposal has been subject to a Land and Property Consultation which has satisfied NRW as to the following risk and issues:

- The Developer is in the process of securing agreements with the necessary other neighbouring land owners;
- The project has been approved in terms of NRW's internal guidance including SaLS;
- There is no Subsidy Control involved; and
- The project is not novel, contentious or repercussive.

NRW Reputational Risk

The Option and Lease between the Welsh Government and the Developer will contain relevant clauses that will contractually bind the Developer to pay any agreed costs of compensatory planting and place any restoration risk with the Developer. In terms of Public Law compliance, this is a non-exclusive Third-Party Access agreement with no infrastructure on NRW land. Such land transactions are not required to be put to the market

and by granting these rights NRW will not be prevented from granting similar rights to other parties in the future.

The request is for access on an existing road on WGWE land for the transportation of wind turbine components onto the land where the construction will be sited.

Restoration Liability

See Risk and Due Diligence Section – NRW Reputational Risk.

Segregation of Duties

Land Management Function:

The access route to the Hirfynydd development will be over land owned by the WGE and NRW will act as managing agents on behalf of Welsh Government. As agreed with Welsh Government under the NRW Framework document, NRW will retain the income.

Statutory Consultee Function:

NRW's input into Developments of National Significance (DNS) processed as a Statutory Consultee is via the Development Planning Advice Service (DPAS). DPAS provides all NRWs statutory planning advice to local authorities and the Welsh Government in relation to planning applications, and local and regional development plans, as well as to project level statutory consultations on Habitats Regulations Assessments (HRAs) and Environmental Impact Assessments (EIAs) for third parties, including those of the Directorate as an 'operator'.

Regulator Function:

NRW are responsible for different types of regulatory regimes across a wide range of activities, including tree felling licencing, Sites of Special Scientific Interest (consents and assents), European Protected Species licencing, water discharges (surface and groundwater) and Countryside Rights of Way Act (access restrictions, open access land). These functions are discharged by the relevant Permitting Service teams and are independent of NRW's Land Management and DPAS functions.

NRW has significant experience in the management of the segregation of duties in managing access for energy development requests. The correct application of SaLS and MoM ensures that responsibility and accountability for decisions as a land manager, regulator and adviser are undertaken in different parts of the organisation. Good internal communication ensures that NRW as a whole has visibility on all issues relating to the project and can maintain effective communications in a co-ordinated manner with the Developer.

Well-Being Goals

Prosperous Wales Innovative, productive, low carbon & skilled, good jobs.	**Resilient Wales** Functioning & adaptable ecosystems supporting social, economic & ecological resilience.	**Healthy Wales** Physical & mental wellbeing maximised. Choices & behaviours for future health are understood.	**More Equal Wales** Everyone enabled to fulfil their potential.	**Cohesive Communities** Attractive, viable, safe and well-connected communities.	**Vibrant culture, thriving Welsh Language** Society protects & promotes the culture, heritage & language.	**Globally Responsible Wales** Making a positive contribution to global wellbeing.
Developer employing local contractors	Clean energy replacing fossil fuels thus contributing to improved ecosystems; energy security which supports resilience against climate change	Clean energy replacing fossil fuels known to have detrimental effect on air quality which adversely impacts health. Potential for improvements to access and recreation opportunities	Income and ownership benefits through shared ownership and Community benefit schemes	Access to Community benefit provides opportunity to build Social Capital through community projects	Development provides new opportunities for sport, recreation and outdoor experiences	Supporting biodiversity resilience through bio diversity net gain.

Legal Advice

Redacted information

Powers

The Welsh Ministers have the powers to lease land acquired (under the various Forestry Acts) by virtue of section 39(2) of the Forestry Act 1967. Under the s.83 Arrangement referred to above, NRW exercises, on behalf of the Welsh Ministers, lease functions for

those parts of the estate considered (by NRW) as being suitable for alternative land use. Under the Agreement written approval of the Welsh Ministers is required as set out in the background section.

Press and Publicity

Onshore wind developments continue to attract publicity and, historically, Developers take the lead on such matters. NRW will ensure that Wales benefits financially from the development and the Determining Authority would ensure appropriate mitigation for any environmental and social impact as part of the planning consent.

Recommendation

It is recommended that the NRW Board support this Submission and forward to the Welsh Ministers to approve

Redacted information

Natural Resources Wales
19th April 2024

Supplementary Information Annex

NRW and Welsh Government decision-making gateways with regard to wind energy projects on the NRW estate

This recommendation to Welsh Gov to approve a S83 request follows an internal screening and "approval in principle" process conducted by NRW's Land Management function. NRW has only considered the access request where it relates to NRW-managed land. NRW's land management function has not considered the wider wind farm because it is located on private land.

The developer will engage separately with NRW's Planning Advice Service and other Statutory consultees with regard to the planning application for the wind farm as a whole, but that is a separate process which is not subject to this S83 request.

Prior to this S83 submission, this access request has been screened by NRW's Land Management teams through a Land and Property Consultation (LPC). This process did not highlight any fundamental showstoppers that would prevent the access route being used for the project,

however it did identify a number of constraints which will require further assessment as summarised below.

Specific issues considered through the LPC for Hirfynydd

Issue	LPC Findings	How will the issue be resolved
Land ownership	• The route passes through land parcels which are all owned freehold by Welsh Ministers. • There is a Coal Board reservation on part of the route which will need Coal Board agreement to resolve. • Further due diligence will be required on underlying mineral reservations prior to any agreement to allow the extraction of stone to upgrade the road.	Full legal title due diligence is conducted as part of the process of developing the legal agreements.
Forestry	• The majority of the route will require no tree felling as the existing access corridor is wide enough. However, the swept path analysis for the delivery of abnormal loads indicates that some tree removal will be required at the entrance and around some hairpin bends which need widening. • Areas of Low Impact native woodland will be impacted around the entrance and the hairpin bends. These are not designated Ancient woodland. • There is one section of new track which will require removal of young conifer crops. • Initial calculation indicates that around 4ha of permanent tree removal will be required for Compensatory planting.	The developer will consult closely with NRW prior to submission of a planning application. NRW will need to approve a felling plan before it is submitted into planning. A Compensatory planting payment will be required for areas of trees lost.
Public access	• A completely new forest entrance will be required following the road widening. • There is an opportunity to re-design the entrance to address public parking, and problems with security barriers, flytipping, illegal access by 4x4s and off-road motorcycles. • There is a waymarked walking trail installed by the local community which will need to be taken into account during road widening. • The Sarn Helen Bridleway passes through the site and will need to be taken into account in any road widening proposals.	An Access Management Plan (AMP) to cover temporary and long term impact on public access will be required for the Planning application. This will be approved by NRW prior to submission.
Impact on designated sites	The proposal for access does not directly impact on any designated site.	
Soils	There is peat present in proximity to the area where the new section of track is required, however the proposed route has been selected to avoid peat.	This will be dealt with in the planning application.

Landscape and Visual Impact Assessment	This is not assessed through the LPC as it is not a land management consideration. However, it is noted that the proposed wind farm site sits within Pre-assessed Area 9	As above.