



**PROJECT**

HIRWAUN POWER PROJECT

**EXAMINING AUTHORITY REFERENCE**

EN010059

**UNIQUE REFERENCE NUMBER**

10027307

**ORGANISATION**

BRECON BEACONS NATIONAL PARK  
AUTHORITY (the BBNPA)

**RESPONSES TO EXAMINING AUTHORITY'S FRIST WRITTEN QUESTIONS**

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*The following sets out the responses of the Brecon Beacons National Park Authority (the BBNPA) to the Examining Authority's (ExA's) first written questions. The following firstly addresses those questions directed at the BBNPA by the ExA before providing some commentary on other questions that the ExA has posed directly to other parties that the BBNPA wish to comment on.*

**Question EIA06.**

From the BBNPAs perspective it is considered that the key projects identified, in so far as it relates to the cumulative impacts of emissions on air quality are appropriate.

**Question OE08.**

The BBNPA does not have the in-house expertise in terms of air quality impacts on ecological receptors and hence sufficient expert knowledge of this technically specialist area to be able to robustly comment on this question. Nevertheless, it is understood following discussions with NRW, that given that the assessment suggests that the development would be less than 1% of the relevant ecological standard that no concerns are raised in relation to the significance criteria set out in Table 6.7 of the ES.

**Question HA23**

The BBNPA confirms that an Appropriate Assessment was undertaken by the BBNPA, as the competent authority, on the Enviroparks Hirwaun Limited planning application in 2009. A copy of the Appropriate Assessment is attached at Appendix I.

**Question DLV04.**

The BBNPA acknowledges the ExA's reference to the BBNP's Dark Sky status and the lack of assessment undertaken by the applicant to fully understand the impact of the development. The Authority has consistently raised the need for the development to consider its night-time effects given the Park's Dark Sky status. However, the applicant has commenced the preparation of a baseline night-time assessment to inform a subsequent possible review of the draft Lighting Strategy. The applicant has provided the BBNPA with updated information and it appears that based on an initial baseline assessment, the project has the potential to improve upon the existing situation. Furthermore the applicant has acceded to BBNP's request to be specified as a consultee under Requirements 16(1).

**Question DLV05**

See above

### **Question DLV08**

See above

### **Question HA07.**

In so far as ecological impacts are concerned, the Enviroparks Planning Obligation principally sought to respond to the direct impacts that the development would have on marshy grassland habitat recognised as a UK BAP priority habitat. The obligation seeks to secure the management of off-site marshy grassland habitat as a means of compensation for its loss on the application site itself. The obligation includes a financial contribution to Butterfly Conservation to prepare a Biodiversity Scheme and form an advisory group to include representatives from RCTCBC and BBNPA along with NRW and the developer. Butterfly Conservation is charged with the task of creating a Habitat Management Plan in consultation with the advisory group. The Habitat Management Plan would form part of the overall Biodiversity Scheme that would itself seek to secure habitat management for a minimum area of 14 hectares of land.

In considering this development, the Authority determined that the obligations agreed between the parties, in addition to other conditions, were sufficient to address the direct impact of the development on this particular habitat. Furthermore, it should be recognised that the application was considered on the basis that the proposal would be the subject of an Environmental Permit which would not be permitted unless it met all the legislative requirements prevalent at that time. The Authority is unaware of whether an application for an Environmental Permit for the Enviroparks development has been submitted to NRW. Nevertheless, the Authority can confirm that it has not received any formal requests for the discharge of planning conditions as yet.

**APPENDIX I: Appropriate Assessment : Enviroparks**

**APPENDIX I:  
Appropriate Assessment by BBNPA  
Enviroparks**

**Application 08/02488/FUL – Development of a sustainable waste resource recovery and energy production park – Hirwaun Enviroparks at Fifth Avenue, Hirwaun Industrial Estate, Hirwaun, Aberdare**

**Brecon Beacons National Park Authority: Habitats Regulations Assessment**

**1.0 Introduction**

- 1.1 The Brecon Beacons National Park Authority received a planning application on 10<sup>th</sup> November 2008 proposing the construction of a sustainable waste resource recovery and energy park on Hirwaun Industrial Estate. The application site (Figure 1.1 of the Non-Technical Summary for the Environmental Statement submitted by Enviroparks Hirwaun Ltd in support of their application, attached as Appendix 1 of this document) straddles the boundaries of two Local Planning Authorities: Brecon Beacons National Park Authority and Rhondda Cynon Taf CBC. As shown on Figure 1.1 the greater proportion (approximately 60%) of the application site lies within area of the Brecon Beacons National Park.
- 1.2 A meeting was held between Brecon Beacons National Park Authority and Rhondda Cynon Taf County Borough Council (CBC) on 9<sup>th</sup> March 2009, in the presence of the statutory agencies, the Countryside Council for Wales and the Environmental Agency Wales to discuss the relevance of a Habitats Regulations Assessment for the proposed development. It was agreed in this meeting (meeting notes are provided in Appendix 2) that a Habitats Regulations Assessment was required and both Local Planning Authorities would act as 'competent authorities' to assess the Enviroparks project in accordance with the Regulation 48 of The Conservation (Natural Habitats, & c.) Regulations 1994. It was accepted in the meeting that the Brecon Beacons National Park Authority would adopt the role of lead 'competent authority' in progressing the Habitats Regulations Assessment. It remains the responsibility of Rhondda Cynon Taf CBC to provide a response to the conclusions reached by the Brecon Beacons National Park Authority.
- 1.3 As competent authority the Brecon Beacons National Park Authority has to determine in giving any form of consent for the proposed Enviroparks development whether the project might have implications for any European sites. Based on the information provided within the Environmental Statement and the initial consultation responses from the Countryside Council for Wales on January 20<sup>th</sup> 2009 (copy of consultation response provided in Appendix 3i) and the Environment Agency Wales of 12<sup>th</sup> February 2009 (copy provided in Appendix 4i) it was determined that the project might have implications for five European sites: Blaen Cynon, Coedydd Nedd a Mellte, Cwm Cadlan, Brecon Beacons and River Usk Special Areas of Conservation (SACs) which lie within the vicinity of the application site (Figure 1.2 of Appendix 5). In the first instance the Brecon Beacons National Park Authority has assessed that project is not directly connected to or necessary for the management of these European site. The Brecon Beacons National Park Authority can only grant consent for the project once it has concluded beyond reasonable scientific doubt that it will not adversely affect the integrity of the SACs.
- 1.4 In line with Regulation 48 – (1) (a) it has been confirmed by the Countryside Council for Wales (copy of consultation response in Appendix 3) and Environment Agency Wales (copy of consultation response in Appendix 4) that the Enviroparks project is likely to have a significant

effect on Blaen Cynon and Coedydd Nedd a Mellte SACs either alone or in combination with other plans or projects. As a consequence it has been necessary for the Brecon Beacons National Park Authority to make an appropriate assessment of the implications of the project for Blaen Cynon and Coedydd Nedd a Mellte SACs in line with the conservation objectives for these sites.

- 1.5 This document sets out the stages of the Habitats Regulations Assessment completed by the Brecon Beacons National Park Authority on the basis on the best practice guidance: Assessing Projects under the Habitats Directive – Guidance for Competent Authorities, David Tyldesley and Associates for the Countryside Council for Wales (September 2008), information provided by the applicant: Enviroparks Hirwaun – Environmental Statement and Enviroparks Hirwaun – Further Environmental and Supporting Information, and consultation advice received from the Countryside Council for Wales and the Environment Agency Wales.

## 2.0 Screening: Checking for the Likelihood of Significant Effects

### 2.1 Scoping Potential Impacts

- 2.1.1 In line with guidance the Brecon Beacons National Park Authority as competent authority sought best expert opinion based on the available objective scientific information to assist in determining the scope of potential impacts. It was recognised at this early stage that the Environment Agency Wales are in a position to offer the best expert opinion on the potential impacts of atmospheric emissions. However, it was acknowledged that the Environment Agency Wales are not named as statutory consultees under The Conservation (Natural Habitats, & c.) Regulations 1994. In addition the Environment Agency Wales considered that they could not provide specific advice on atmospheric emissions for the Habitats Regulations Assessment at the planning application stage for risk of prejudicing any subsequent application made to them by the applicant under the Environmental Permitting Regulations (EPR) 2007. This matter was acknowledged by the Countryside Council for Wales in their consultation response of 3<sup>rd</sup> April 2009 (copy presented in Appendix 3ii) in which they highlighted the scope of their remit in supporting the competent authorities with the Habitats Regulations Assessment.

- 2.1.2 A meeting was held on 18<sup>th</sup> March 2009 between the Brecon Beacons National Park Authority and the Countryside Council for Wales to scope the range of potential impacts that may arise from the proposed Enviroparks development which might give rise to likely significant effects on European Sites. Table 1 below sets out the initial assessment reached during this meeting.

**Table 1** Initial scope of potential sources of impact on the SACs associated with the proposed Enviroparks development

European Site	Features	Potential Impact Sources
Blaen Cynon SAC	Marsh fritillary	Atmospheric emissions Contaminated land

		Hydrological change
Coedydd Nedd a Mellte SAC	Sessile oak woodlands and mixed woodland on base-rich soils	Atmospheric emissions
Cwm Cadlan SAC	Alkaline fens and <i>Molinia</i> meadows	Atmospheric emissions
Brecon Beacons SAC	Plants in crevices in base-rich rocks and plants in crevices in acid rocks	Atmospheric emissions
River Usk SAC	River with floating vegetation, Allis shad, Twaite shad, Bullhead, River lamprey, Brook lamprey, Sea lamprey, Atlantic salmon and otter	Atmospheric emissions

## 2.2 Screening for Likely Significant Effects

2.2.1 The Environment Agency Wales provide written guidance (ENVIRONMENT AGENCY (2008) HI Environmental Risk assessment: Part 2, Assessment of point source releases and cost-benefit analysis) on the screening thresholds for the establishment of likely significant effects of atmospheric emissions on sensitive sites (European sites or Sites of Special Scientific Interest). This guidance has been used by all parties to screen the likely significant effects either alone or in combination of the potential impacts sources on the European sites.

2.2.2 Section 3.2.1 of the HI Environmental Risk assessment provides guidance on the trigger points to screen out emissions to air that are insignificant when deposited to land. This guidance has been interpreted by the applicant in describing the screening process for assessing significance as follows.

- If the long term process contribution (PC) to ground level concentration or deposition rate is less than 1% of the assessment level for any pollutant, the impact of that pollutant is likely to be insignificant.
- If the short term process contribution (PC) to ground level concentration or deposition rate is less than 10% of the assessment level for any pollutant, the impact of that pollutant is likely to be insignificant.
- If the combination of the long term contribution to ground level concentrations or deposition rates, plus the background (known in combination as the predicted environmental concentration (PEC)) exceeds 70% of the assessment level for any pollutant, it is unlikely to have an insignificant effect, and therefore requires further, detailed modeling work.

2.2.3 The Countryside Council for Wales, in their consultation response of 3<sup>rd</sup> April 2009, make an alternative interpretation of the screening assessment guidance which they rephrased as follows.

- **Alone significance test (long term):** Where the process contribution (PC) to concentration/deposition within any sensitive part of the European site is greater than 1% of the relevant long term benchmark (Note 1), the emission is likely to have a significant effect.  
**Note 1** Environmental benchmark refers to the environmental criteria such as critical loads or levels as determined by the Air Pollution Information System (APIS). The assessment must consider quality impacts not only in terms of human health and the Air Quality Strategy, but also in terms of ecological impacts.
- **Alone significance test (short term):** Where the process contribution to concentrations within the European site is less than 10% of the short term bench mark, the emission is unlikely to have a significant effect.
- **In combination significance test:** Where the process contribution is >1% of a long term benchmark and the predicted environmental concentration (PEC) is >70% this is a likely significant effect in combination. Conversely if the PEC is <70% it is unlikely that this will be significant (unless the process contribution is very high). The PEC is calculated by adding the PC with the background levels.

2.2.4 The interpretation and phrasing of the screening guidance is a key point which is discussed further below.

2.2.5 Following receipt of additional information from the applicant (copy of letter from Envisage 13<sup>th</sup> February 2009 provided in Appendix 6) and further appraisal of the application site the Countryside Council for Wales refined their initial views on the potential impacts in their consultation response of 3<sup>rd</sup> April 2009 (copy provided in Appendix 3ii). Table 2 provides a summary of the initial screening advice from the Countryside Council for Wales and the consultation response from the Environment Agency Wales of 30<sup>th</sup> March 2009 (copy provided in Appendix 4ii).

Table 2 Initial Screening of Likely Significant Effects

European Site	Features	Potential Impact Sources	Assessment of Likely Significant Effects
Blaen Cynon SAC	Marsh fritillary	Atmospheric emissions	Yes
		Contaminated land	
		Hydrological change	No
Coedydd Nedd a Mellte SAC	Sessile oak woodlands and mixed woodland on base-rich soils	Atmospheric emissions	Yes
Cwm Cadlan SAC	Alkaline fens and <i>Molinia</i> meadows	Atmospheric emissions	Yes



Brecon Beacons SAC	Plants in crevices in base-rich rocks and plants in crevices in acid rocks	Atmospheric emissions	No
River Usk SAC	River with floating vegetation, Allis shad, Twaite shad, Bullhead, River lamprey, Brook lamprey, Sea lamprey, Atlantic salmon and otter	Atmospheric emissions	No

- 2.2.6 On the basis of their views that the atmospheric emissions from the proposed Enviroparks project are likely to have significant effects on European sites both the Countryside Council for Wales and the Environment Agency Wales lodged formal objections (Appendix 3 and 4). The specific emissions considered likely to have effects were Nitrogen deposition and Acid deposition. In response to these objections the applicant provided in May 2009 additional information to support of the project proposal in the form of a report entitled Enviroparks Hirwaun – Further Environmental and Supporting Information. The initial sections of Chapters 1 and 2 of this report provided the atmospheric emission data which were derived from a revised air quality modelling process.
- 2.2.7 Concerns remained (Environment Agency Wales consultation response of 12<sup>th</sup> June 2009, copy provided in Appendix 4iii) relating to aspects of the revised air quality modelling methodology and assumptions used by the applicant. Further technical information was provided directly to the Environment Agency Wales by the applicant to support the validity of the modelling process. A summary of the technical reports provided direct to the Environment Agency Wales is set out in their consultation response of 31<sup>st</sup> July 2009 (Appendix 4iv). The Environment Agency Wales concluded in this consultation response that, “*the applicant’s modelling methodology is fit for purpose*” at the planning application stage. As a consequence it was now possible for the Countryside Council for Wales and the Local Planning Authorities to have confidence in the data outputs of the air quality model in considering the likelihood of impacts of the Enviroparks project on the European sites.
- 2.2.8 Tables 10-12 and 15 of the Enviroparks Hirwaun – Further Environmental and Supporting Information report provide the emissions modelling results for Nutrient Nitrogen deposition Acid deposition respectively. These figures show process contributions of greater than 1% of the nutrient nitrogen and acid critical loads for sensitive sites. In the case of Blaen Cynon SAC the applicant’s model predicts a process contribution of 1.94% of the nutrient nitrogen critical load and a process contribution of 14.83% of the acid critical load for the most sensitive features within the site.
- 2.2.9 The applicant completed a screening search in consultation with Brecon Beacons National Park Authority and Rhondda Cynon Taf CBC for other projects and plans that might operate in combination with the Enviroparks project to have a likely significant effect on the European sites. Their conclusion is accepted, that the available background concentrations at the affected sites and the changes in traffic flows in the area around the proposed site represent the only

likely in combination effects. Tables 15 and 17 of Enviroparks Hirwaun – Further Environmental and Supporting Information report provide the modelling results of the in combination assessment.

- 2.2.10 Within the Enviroparks Hirwaun – Further Environmental and Supporting Information report, the applicant argues on Page 42 of Chapter 1 that, “*although the [atmospheric emissions] process contributions cannot be screened as insignificant, they are considered to contribute a minor proportion of the total and thus are not considered to have a significant impact overall.*” In addition on Page 132 of Chapter 2 they argue that, “*although the [atmospheric emissions] process contributions cannot be screened as insignificant, they are considered to contribute a minor proportion of the total and thus are not considered to have a significant impact overall on the integrity of Blaen Cynon SAC and its conservation objectives.*”
- 2.2.11 The Countryside Council for Wales accept in their response of 20<sup>th</sup> August (Appendix 3iii) that a process contribution in excess of the screening thresholds does not automatically mean that an adverse effect to a European site will occur as the Environment Agency H1 Environmental Risk guidance is set on a precautionary basis. However, they do state that the applicant is less precautionary in their interpretation of the implications of the predicted process contributions. Nevertheless all parties agree that the inputs from the atmospheric emissions cannot screen out the effects as insignificant in accordance with accepted guidance for assessing likely significant effects in air quality based Habitat Regulations Assessments.
- 2.2.12 On the basis of case law on the application of the assessment of likely significant effect, the Countryside Council for Wales advises that the ‘precautionary principle’ that applies at the Appropriate Assessment stage should also be applied at the Screening stage. If the effect cannot be ruled at the Screening stage it must be presumed as Significant.
- 2.2.13 Based on the data provided by the applicant the Countryside Council for Wales and the Environment Agency Wales conclude in their consultation responses (Appendix 3iii and 4iv) that the inputs of Nutrient Nitrogen from the predicted atmospheric emissions of the proposed Enviroparks project will exceed the accepted screening threshold at the Blaen Cynon SAC and they cannot be ruled out at the more distant Coedydd Nedd a Mellte SAC. In addition they also conclude that the Acid inputs from the proposed Enviroparks project will exceed the screening thresholds at the Blaen Cynon SAC. The range of other potential atmospheric emissions inputs to these two SACs and the other known European sites were screened out along with the other potential sources of impact from contaminated land and hydrological change.
- 2.2.14 In accordance with the best scientific opinions provided by the Countryside Council for Wales and the Environment Agency Wales the Brecon Beacons National Park Authority conclude that Significant effects must be presumed on the Blaen Cynon and Coedydd Nedd a Mellte SACs as a consequence of the proposed Enviroparks project. Table 3 below provides a summary of the conclusion of the Screening stage of the Habitats Regulations Assessment.
- 2.2.15 The Brecon Beacons National Park Authority having concluded on the presumption of likely significant effects on the Blaen Cynon and Coedydd Nedd a Mellte SACs must make an

Appropriate Assessment under Regulation 48 of the implications of the project on these European sites in line with the conservation objectives for these sites.

**Table 3** Final Screening of Likely Significant Effects

European Site	Features	Potential Impact Sources	Assessment of Likely Significant Effects Alone & In Combination	Source of Likely Effect
Blaen Cynon SAC	Marsh fritillary	Atmospheric emissions	Yes	Nutrient Nitrogen and Acid deposition
		Contaminated land	No	N/A
		Hydrological change	No	N/A
Coedydd Nedd a Mellte SAC	Sessile oak woodlands and mixed woodland on base-rich soils	Atmospheric emissions	Yes	Nutrient Nitrogen deposition
Cwm Cadlan SAC	Alkaline fens and <i>Molinia</i> meadows	Atmospheric emissions	No	N/A
Brecon Beacons SAC	Plants in crevices in base-rich rocks and plants in crevices in acid rocks	Atmospheric emissions	No	N/A
River Usk SAC	River with floating vegetation, Allis shad, Twaite shad, Bullhead, River lamprey, Brook lamprey, Sea lamprey, Atlantic salmon and otter	Atmospheric emissions	No	N/A

### 3.0 Appropriate Assessment

#### 3.1 Blaen Cynon SAC

- 3.1.1 The Environment Agency Wales has confirmed in their letter of 31<sup>st</sup> July 2009 (Appendix 4iv) that the revised air quality modelling exercise completed by the applicant is “fit for purpose” at

the planning permission stage. It is also their view that the model outputs predicting process contributions in excess of the 1% screening threshold are “very likely at the Blaen Cynon SAC.” As a consequence the Agency states that such exceedence “will have implications at Permitting stage [permit required under the Environmental Permitting Regulations 2007 to operate the proposed Enviroparks plant] and require the submission of further information and proposals regarding the appropriate technical solutions to control emissions to an acceptable level.” The Environment Agency conclude “In relation to this particular proposal [Enviroparks Hirwaun], we expect that on the information so far reviewed a suitable technical solution to control the atmospheric pollution impacts of the proposed development will be proposed by the applicant as part of their EPR Permit application and that since such a permit cannot be granted without such technical solutions we are able to remove our objection on that basis.”

- 3.1.2 At the time of this assessment no EPR Permit application has been made to the Environment Agency Wales for the proposed Enviroparks project. The Agency has nevertheless confirmed that the Brecon Beacons National Park Authority, Rhondda Cynon Taf CBC and the Countryside Council for Wales will be consulted as part of the determination process. In determining the permit application the Environment Agency Wales equally assess the impacts of the project on European sites in line with Regulation 48 of The Conservation (Natural Habitats, & c.) Regulations 1994. The Agency clearly states that “An EPR permit would be refused if it did not meet all the relevant legislative requirements.”
- 3.1.3 Drawing on the statements provided by the Environment Agency Wales, and on seeking their own expert views, the Countryside Council for Wales confirm that they are “of the view that there are technical approaches available that could avoid adverse effect to the integrity of any SAC ..... and that the best approach to achieve this should be identified and applied at the EPR stage, where more detail will be considered by EAW [Environment Agency Wales].”
- 3.1.4 The Countryside Council for Wales conclude that “Since an EPR decision will require assessment of acceptable new atmospheric loadings and is subject to Regulation 48 of the Habitat Regulations (as amended), CCW [Countryside Council for Wales] is confident that adverse affect to the integrity of any SAC ..... can be avoided and that there is a legal and enforceable framework in place via the EPR permission to ensure this. CCW therefore withdraws its holding objections to this proposal.”
- 3.1.5 As competent authority the Brecon Beacons National Park Authority, in line with Regulation 48 of The Conservation (Natural Habitats, & c.) Regulations 1994, case law interpreting said regulations and best scientific opinion conclude that adverse affect on the integrity of the Blaen Cynon SAC can be avoided by the application of available technical solutions which will be appropriately defined and enforced by the Environmental Permitting Regulations process as conducted by the Environment Agency Wales.
- 3.2 Coedydd Nedd a Mellte
- 3.2.1 The letter of 31<sup>st</sup> July 2009 from the Environment Agency Wales encloses a report from its Air Quality Modelling and Assessment Unit (AQMAU) dated 6<sup>th</sup> July 2009. Section 3.19 of the report state that “a PC [process contribution] of greater than 1% of the nutrient nitrogen critical load cannot be ruled out at Coedydd Nedd a Mellte ..... “

- 3.2.2 No specific statement is made by the Environment Agency Wales regarding Coedydd Nedd a Mellte SAC in their covering letter to the Air Quality Modelling and Assessment Unit report. By inference any potential exceedence to the screening thresholds will have “*implications at Permitting stage*” that will “*require the submission of further information and proposals regarding the appropriate technical solutions to control emissions to an acceptable level.*” It is equally appropriate to have confidence that the Agency would “*expect that on the information so far reviewed a suitable technical solution to control the atmospheric pollution impacts of the proposed development will be proposed by the applicant as part of their EPR Permit application and that since such a permit cannot be granted without such technical solutions we are able to remove our objection on that basis.*”
- 3.2.3 The Countryside Council for Wales on the basis of their own expert view and the statements provided by the Environment Agency Wales that they are “*of the view that there are technical approaches available that could avoid adverse effect to the integrity of any SAC ..... and that the best approach to achieve this should be identified and applied at the EPR stage, where more detail will be considered by EAW [Environment Agency Wales].*”
- 3.2.4 The Countryside Council for Wales conclude that “*Since an EPR decision will require assessment of acceptable new atmospheric loadings and is subject to Regulation 48 of the Habitat Regulations (as amended), CCW [Countryside Council for Wales] is confident that adverse affect to the integrity of any SAC ..... can be avoided and that there is a legal and enforceable framework in place via the EPR permission to ensure this. CCW therefore withdraws its holding objections to this proposal.*”
- 3.2.5 As competent authority the Brecon Beacons National Park Authority, in line with Regulation 48 of The Conservation (Natural Habitats, & c.) Regulations 1994, case law interpreting said regulations and best scientific opinion conclude that adverse affect on the integrity of the Coedydd Nedd a Mellte SAC can be avoided by the application of available technical solutions which will be appropriately defined and enforced by the Environmental Permitting Regulations process as conducted by the Environment Agency Wales.