

## DNS/3236340 Mor Hafren ERF

### Cardiff Council Response to Further Information: HRA

Cardiff Council's Ecologist has a series of comments on the HRA produced by Applicant's Ecologist in relation to the Mor Hafren project.

1. Section 10.5.50 of the ES, which relates to Operational Stage Impacts of the Severn Estuary SAC/SPA/Ramsar and SSSI, states that *'Although the daily NOx process contribution is above 1% of the relevant critical level the predicted environmental concentration is well below the level identified for the protection of vegetation and ecosystems. No adverse impacts on the interest features of the European site are therefore anticipated during operational stage.'* Taken at face value this suggests that at least the process contribution should have been considered further in the HRA, for example in an Appropriate Assessment. Secondly it is not sufficient to 'anticipate' no adverse impacts. In the Waddenzee<sup>i</sup> case the ECJ ruled that a project should be subject to appropriate assessment *"if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects"*. This ruling establishes that 'likely' should not be interpreted as 'probable' or 'more likely than not'. Rather an effect should be considered likely if it cannot be ruled out on the basis of objective information. The 'anticipation' of no likely significant effect does not pass this test of being able to conclude on the basis of scientific evidence that there will be no significant adverse effect.
2. The HRA has considered the impact of emissions from the facility upon local air quality, but does not seem to have considered the potential impact of the emissions to air from road traffic, noting that 200,000 tonnes of materials per year will be delivered by road. It seems inevitable that these road journeys will use Wentloog Avenue and Lamby Way, the latter which passes within 700m of the Severn Estuary SAC. I note that an air quality assessment (Section 5.20 of the Local Impact Report) in respect of transport emissions has been provided, and

that Shared Regulatory Services have concluded that it is not plausible to support determination of this application on the grounds of air quality on the basis of the submitted information. The likely air quality impacts of the development are assessed as having a negative effect. In making this assessment, two receptors within the Severn Estuary have been considered. Therefore the HRA should at least make reference to this assessment, even if it concludes an insignificant effect.

3. Section 10.1.1 of the HRA Screening Report states that '*The project alone is not considered to have any likely significant effects on the interest features of the relevant European sites. It follows that a project with no likely significant effects cannot act in-combination with other plans or projects as there are no appreciable effects on the site to consider.*' I do not agree with this analysis, because the reason for an in-combination assessment is to look at plans or projects which would not be likely to have a significant effect alone, for example because a threshold is not reached, but which when combined would surpass that threshold and so would be likely to have a significant effect. Therefore to state that there can be no in-combination effects because the effects alone are not significant completely defeats the object of the requirement for an in-combination analysis. In fact, the Mor Hafren project should be assessed in combination with other projects in the area, such as the Parc Calon Gwyrdd, Uskmouth Power Station and Portmanmoor Road replacement chimneys projects, among others. In this respect, I note that the ES addendum sets out a cumulative impact assessment of these projects, however, the requirement for a cumulative assessment in an ES is set out in separate legislation to that which requires and in-combination assessment under the Habitats Regulations.
4. Guidance in respect of in-combination assessments is set out in the following documents:-

**Habitats regulations assessments: protecting a European site**

<https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

*'Check for combined effects. Your proposal alone may have an effect on a European site that's not significant. You must check if this effect could combine with any other proposal planned or underway and affects the same site, that on its own also does not have a significant effect. If, in combination, your proposal could have a significant effect on the European site, you will need to do an appropriate assessment.'*

## **Assessing Projects Under The Habitats Directive Guidance For Competent Authorities**

**David Tyldesley And Associates For The Countryside Council For Wales,  
Revised September 2011**

### **B.1.7 When an 'in combination' check is required**

*'If a project alone is checked and it is concluded that it would be likely to have a significant effect on a European site alone, it should, at least initially, be subject to an appropriate assessment on its own. In checking for the need for an appropriate assessment it may be concluded that the project could affect the site in some way, but that alone these effects are unlikely to be significant. In such cases the competent authority should check whether significant effects would be likely if the project was combined with other plans or projects. An in-combination assessment is required in order to comply with the Habitats Regulations, and should include any other plans or projects that have been checked for the need for an appropriate assessment and where the following applies:*

- a) *It has been concluded that the other plan or project may affect the site, but the effects are not significant on their own. A number of plans or projects with effects that individually have been determined to be insignificant may still result in a significant effect on the site if all their effects on the site are combined.*
- b) *It has been concluded that the other plan or project may have a significant effect alone and where measures have consequently been included to reduce the effect to a level where it is no longer considered to be significant*

*when the plan or project is considered alone, but where the measure applied will not remove the effect completely. Such residual effects could still contribute to a significant effect when considered in-combination with other effects.*

*An in-combination assessment does not need to include any other plans or projects that have been checked for the need for an appropriate assessment and where the following applies:*

- a) It has been concluded that the other plan or project will not have any effect at all on the site, and thus it cannot have an effect either alone or in-combination.*
- b) It has been concluded that the plan or project may have an effect on the site and the necessary measures have been put in place to completely remove the likelihood of any effects (that is, avoidance measures are integral to the project).'*

**Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. November 2001.**

This document provides two examples which attempt to illustrate how the in combination assessment should be carried out.:-

*'A proposed road will pass some distance from a Natura 2000 site and the disturbance it will generate (noise etc.) will not significantly affect bird species important to the integrity of the site. However, if there are other existing or proposed projects or plans (e.g. a road on the other side of the Natura 2000 site), then total noise levels from all these projects taken together may cause disturbance that is assessed as significant.'*

*'Where a proposed project is likely to reduce water levels in a Natura 2000 site. While that resource reduction in itself may not be significant, where there are existing fertiliser and pesticide residues reaching the site from nearby intensive farming, the lower water levels may mean higher concentrations of pollutants when run-off occurs, to an extent that the combined effect becomes significant.'*

Ends.

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<sup>i</sup> 'Waddenzee ruling' Case C-127/02, JUDGMENT OF THE COURT (Grand Chamber) 7 September 2004 (1) (Directive 92/43/EEC – Conservation of natural habitats and of wild flora and fauna – Concept of 'plan' or 'project' – Assessment of the implications of certain plans or projects for the protected site).