



Secretary of State for Business, Energy and Industrial Strategy  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
Westminster  
London  
SW1H 0ET

18 June 2019

FAO Denise Libretto  
Dear Madam,

**Electricity Act 1989 (As Amended) Application for Section 36C Variation of Consent for Llandinam Windfarm to Extend the Implementation Timescale for the Development for a Further 5 years**

**Introduction**

Celt Power Ltd ('the Applicant') have commissioned Arcus Consultancy Services ('Arcus') to present under The Electricity Act 1989 a Section 36C consent application ('the Variation Application') to the Secretary of State for Business, Energy and Industrial Strategy ('the Secretary of State') to apply for a variation to the Section 36 consent ('the Original Consent') issued on 7<sup>th</sup> September 2015 under Section 36 of the Electricity Act 1989 for the repowering of the Llandinam Windfarm, Powys, Mid Wales.

The Variation Application seeks to amend the Section 36 repowering consent that was granted on 7 September 2015. The Variation Application has been prepared in accordance with 'The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013' ('the 2013 Variation Regulations') and the guidance issued by the Government in respect of variation applications ('Varying consents granted under Section 36 of the Electricity Act 1989 for generating stations in England and Wales, July 2013').

The Variation Application includes Information to inform the Environmental Impact Assessment ('EIA') Screening decision.

The Applicant is also seeking a direction under Section 90 (2) of the Town and Country Planning Act (Section 90 Direction) that planning permission be deemed to be amended in line with the Variation Application.

**Background**

The Applicant received Section 36 consent (Appendix A) for the repowering of the Llandinam Windfarm to build 34 wind turbines and associated infrastructure ('the Development') following a multi scheme Public Inquiry held between June 2013 and May 2014. Consent was granted on 7<sup>th</sup> September 2015. Condition 5 of the Section 36 consent requires that the Development is implemented within 5 years of the date of consent. If not implemented the consent will expire on 7 September 2020.

The Original Consent repowering application submitted in 2008 was screened as an Environmental Impact Assessment project (EIA) and an EIA was submitted as part of the Section 36 consent application. Supplementary environmental information was prepared and submitted in 2011 and 2013 as part of the consenting process.

### **The Proposed Variation**

The principal reason for seeking to vary the 2015 consent is that the Section 37 Consent for the grid connection for the Original Consent was not approved as part of the mid Wales Inquiry and discussions are ongoing between the Applicant and Manweb, the grid provider in mid Wales, with regard to alternative connection options. The grid situation is complicated as there are other large windfarm schemes at Llanbrynmair and Carnedd Wen that were part of the same mid Wales Inquiry for which a consent decision from BEIS remains outstanding. Manweb advise the Mid Wales Grid Connection project (NG/SP Manweb project) is on hold until decisions are made on the above applications. This grid project is essential to securing a connection for the Original Consent as it will create further grid/transmission capacity in Mid Wales.

A grid solution for Llandinam alone is cost prohibitive for the project and a collaborative developer led solution is required where costs can ideally be apportioned or shared.

SP Manweb have no other current plans to upgrade the mid wales grid network and have advised that a developer based solution is the only way forward.

The Applicant is requesting more time to evaluate the outcome of these windfarm decisions and the resulting outcome/potential of the Mid Wales Connections project, and whether this will generate further developer interest surrounding developer led solutions to resolve the grid capacity issues/and costs associated with projects within SSAC.

The Variation Application seeks a variation of Condition 5 of the Original Consent to allow for a five-year extension of time for implementation to 7<sup>th</sup> September 2025, to allow the Applicant to rectify outstanding grid connection issues and implement the development. The Section 36C variation will not represent any intensification or material change which would alter the scale or nature of the Original Consent necessitating an amendment to the development or material change to any of the conditions attached to the original consent other than Condition 5.

### **Consultation**

The original application which resulted in the 2015 consent was subject to an extensive programme of consultation and was examined at a Public Inquiry between June 2013 and May 2014. This included consultation with Statutory Consultees such as NRW and Powys Council who despite initial objections ultimately supported the scheme as well as a programme of community consultation. Public exhibitions were held in Newtown, Dolfor, and Llandinam on three consecutive days in December 2007. Members of the public were invited to view the proposals. Comments received from these exhibitions were taken into consideration in the Development layout design and in the production of the original ES. A further round of public consultations was undertaken following the submission of the Section 36 Application in May and June 2008.

The consultation exercise undertaken is outlined in full in the original Consent Environmental Statement and Planning Statement.

In addition the Applicant sought an EIA Scoping Opinion from The Department of Energy and Climate Change (now BEIS) in April 2007 with a response received in June 2007.

Given the very limited scale of change being sought via the Variation Application the Applicant has taken a proportional approach to pre-application consultation for the Development. A pre-application meeting took place with BEIS on May 1<sup>st</sup> 2019 to introduce the proposal and discuss

the planned approach, proposed consultations and timescales. Further pre application consultation has taken place with Powys Council 2019 and The Welsh Government between May 28<sup>th</sup> and June 5<sup>th</sup>, various contacts and discussion by both email and telephone to advise them of plans to submit the S36C application. A further round of public exhibitions was not at this stage considered to be necessary.

In each case the Statutory Consultees identified above have been contacted by telephone and follow up e-mail and provided with an outline of the proposal and the approach being taken to the Variation Application. The following responses have been received to date:

<b>Consultee</b>	<b>Date of Response</b>	<b>Comment</b>	<b>Applicant response</b>
Powys Council	Advice 4 <sup>th</sup> June 2019	Area and case Officers do not deal with wind applications so Liaise with the Senior Professional once the application was made and an email was provided for the submission of application documentation	Application will be made to the email address given and follow up to the Senior Professional will be made once the application is submitted
Welsh Government	Written Response 5 <sup>th</sup> June 2019	Thanked Celt Power for contacting them and advised of contact details for the application to be submitted at which point an individual for further discussion will be appointed for the scheme	Application will be made to the contact email provided and followed up once a named individual is allocated.

It was acknowledged that BEIS would Screen the Variation Application BEIS advised that the following considerations should be applied:

- Whether the effects have changed from the previous application.
- Whether it is possible to rely on the previous Environmental Information with cross references or if new information is required.
- The Environmental Information must demonstrate that the 2017 EIA Regulations have been considered.

The Applicant's response to the request from BEIS is documented in the supporting information to advise an EIA Screening decision at Appendix B.

### **Planning Policy Background**

National, Regional and Local planning policy in Wales has also been subject to change since the original Section 36 consent application was submitted. The main changes are summarised below. It should be noted that whilst there have been changes, the underlying policy framework remains supportive of a move towards tackling climate change and renewables development,

including onshore wind developments. Developments are supported where the environmental impacts are considered to be acceptable.

### **Planning Policy Wales Edition 10, December 2018**

Section 5.7 Energy Context is particularly relevant to the Development. Paragraph 5.71 states that planning plays a key role in delivering clean growth and the decarbonisation of energy, as well as being crucial in building resilience to the impacts of climate change.

Planning Policy Wales Ed 10, paragraphs 5.9.23-24 related to Re-powering, Life Extension, Decommissioning and Remediation state that "*The extension and re-powering of existing renewable energy infrastructure is important in meeting renewable energy and decarbonisation targets. Planning authorities should support such schemes and take into account changes in renewable energy technology and viability, which may mean, for example, that the format of a repowered wind farm will be different from an existing scheme. Planning authorities should set out broad criteria for the determination of life extension and re-powering applications, based on the additional impact of the new scheme.*"

The Environment (Wales) Act 2016 sets a legal target of reducing greenhouse gas emissions by at least 80% by 2050, with a requirement for interim targets every 10 years.

### **Planning Act (Wales) 2015**

The Planning (Wales) Act 2015 principally amends the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004, to introduce a number of reforms that strengthen the 'plan-led' approach to planning in Wales and improve the development management and enforcement systems<sup>1</sup>. This Act introduces new objectives. The following have been identified as relevant to the Development:

- Strengthening the plan-led approach – introduction of a legal basis for the preparation of a National Development Framework and Strategic Development Plans. Therefore, new applications will have to accord with the National Development Framework and the Strategic Development Plan.

The Act reinforces the transition to sustainable development: "*any statutory body carrying out a planning function must exercise those functions in accordance with the principles of sustainable development as set out in the Well-being of Future Generations (Wales) Act 2015.*"

### **Environment (Wales) Act (2016)**

The Environment (Wales) Act puts in place legislation to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way and to establish the legislative framework necessary to tackle climate change. Sustainable management of natural resources must be in a way that delivers outcomes for the environment, people, the economy and communities. Central to the Act is the need to adopt an integrated approach to managing our natural resources in order to achieve long-term sustainability<sup>2</sup>.

### **Powys County Council Local Development Plan, April 2018**

The Powys Local Development Plan (PLDP) was adopted in 2018<sup>3</sup>, and sets out the Council's vision, objectives and policies for the development of Powys up to 2026.

### **Policy RE 1 Renewable Energy**

Proposals for renewable and low-carbon energy development will be permitted subject to the following criteria:

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<sup>1</sup> <http://www.legislation.gov.uk/anaw/2015/4/contents/enacted>

<sup>2</sup> <http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

<sup>3</sup> <https://en.powys.gov.uk/article/4898/Adopted-LDP-2018>

1. Within or close to the Strategic Search Areas (SSAs), proposals for wind energy greater than 25MW will be permitted subject to criteria 3 to 5;
2. Within Local Search Areas (LSAs) [...] proposals for renewable and low carbon energy will only be permitted where they can demonstrate they would not prejudice the purpose of the LSA;
3. Proposals for all types of renewable and low carbon energy development and associated infrastructure either on their own, cumulatively or in combination with existing, approved or proposed development, shall comply with all other relevant policies in the LDP;
4. Satisfactory mitigation shall be in place to reduce the impact of the proposal and its associated infrastructure. Proposals shall make provision for the restoration and after-care of the land for its beneficial re-use; and
5. Where necessary, additional compensatory benefits will be sought by agreement with applicants in accordance with Policy DM1 - Planning Obligations.

The Development is considered to remain compliant with updated policies and the previous planning assessment submitted as a part of the Original Application submitted is considered to remain relevant.

### **Environmental Assessment**

The Original Consent included an Environmental Statement ('ES') that was prepared in accordance with 'The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000'.

The Original Consent was granted following an application that included an Environmental Statement (ES)<sup>4</sup>, comprising:

- The 2008 ES;
- The Supplementary Environmental Information (SEI) dated 2011; and
- The SEI dated 2013.

'The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (the '2017 EIA Regulations'), came into effect on 16 May 2017 and replaced the 2000 EIA Regulations. In terms of Environmental Impact Assessment (EIA), this application falls under the 2017 EIA Regulations<sup>5</sup>. Schedule 2 of those EIA Regulations identifies "*development requiring screening if no EIA Report is provided*". Paragraph 3 of Schedule 2 specifies "*development to provide a change or extension of (a) a generating station ... where the generating station ... is already authorised ... and the change or extension may have significant adverse effects on the environment.*"

The wording of the paragraph above confirms that the focus for the consideration of screening has to be whether the change or extension would have significant effects on the environment. The only change proposed by the Variation Application is to extend the period allowed between consent and the start of construction for a further 5 years.

It is the opinion of the principal author of the Information to advise Screening provided at Appendix B<sup>6</sup> that, based on the information the change will not have significant adverse effects on the environment, and hence the conclusion of the screening process should be that the application does not require EIA.

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<sup>4</sup> The ES comprised the original ES document submitted in 2008, and Supplementary Environmental Information (SEI) submitted in 2011 and 2013.

<sup>5</sup> The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017. SI 2017/580. Available at: <http://www.legislation.gov.uk/uksi/2017/580/contents/made> [accessed on 04/06/2019].

<sup>6</sup> Dr Paul Phillips, a Registered EIA Practitioner, as set out in Section 6 of this document.

The change of period prior to construction will, itself, have no effects on the environment, because during this period the Development will continue not to have started. The potential for the change to have significant adverse effects in terms of the EIA Regulations is therefore limited to changes to the EIA Regulations since the EIA was last updated (2013). For the purposes of completeness, changes to the baseline environment since the EIA was last updated (2013) have also been set out, to provide commentary on whether there would be any change to the assessment of likely significant effects.

The following sections are included at Appendix B:

- **Baseline review:** a review of the baseline environment referred to in the Environmental Statement (ES)<sup>7</sup> that accompanied the application for the Section 36 Consent that was granted, to understand if the baseline environment may have changed sufficiently to change the assessment of likely significant effects;
- **Cumulatives development update:** a summary of changes to windfarm developments in the vicinity of the Development, to understand if the cumulative situation may have changed sufficiently to change the assessment of likely significant effects;
- **Assessment of effects on climate change:** updating the assessment to meet the requirements of the latest EIA Regulations, to demonstrate no significant adverse effects;
- **Assessment of effects on human health:** providing a summary of potential effects on human health, to meet the requirements of the latest EIA Regulations, to demonstrate no significant adverse effects;
- **Authorship of this document:** providing commentary on the experience and professional status of the authors of this document, in response to requirements for EIA Reports in the latest EIA Regulations; and
- **Conclusions.**

## Conclusion

The Applicant has applied for a Section 36C variation of consent and deemed planning permission for the Llandinam Windfarm to extend the implementation of the Original Consent for a further five years following ongoing uncertainty in respect of the grid solution for connecting the Development to the wider electricity network, and are requesting more time in support of seeking resolution.

The Development in terms of the 2017 EIA Regulations requires to be Screened for EIA, A detailed review of the potential for the Development to have significant effects, together with a review of changes to baseline conditions and cumulative developments has been carried out, which identifies minimal changes and in the professional opinion of the assessor identifies no issues that would require an EIA to be undertaken. This information is appended to this letter to advise BEIS in undertaking Screening.

Planning Policy (and indeed the political importance afforded to combatting the effect of climate change) has evolved and has taken a stronger pro renewables stance since the original consent was granted. New planning policy provides support for the Development and the original planning assessments undertaken as a part of the Original Application demonstrating the acceptability of the development in environmental terms are considered to remain relevant.

A proportional consultation exercise reflecting the nature of the variation sought has been undertaken and all comments received have been incorporated as far as possible into the Variation Application approach.

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<sup>7</sup> The ES comprised the original ES document submitted in 2008, and Supplementary Environmental Information (SEI) submitted in 2011 and 2013.

It is therefore respectfully requested that BEIS approve the Section 36C variation for a 5 year consenting period extension in order to allow for an appropriate grid solution to be identified.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Clare Walters', followed by a period.

Clare Walters MA CEnv MRICS  
Technical Director