

Briefing Note: Irreplaceable Habitats, Peatlands and Wind Farm Developments

07 February 2025

Summary:

This paper is primarily focused on peat soil / peatland habitats and wind farms, though the issues apply equally to all Section 7 habitats and development types.

Our analysis indicates that there should be no reason for tension between the protection of our peatland resource and the need for more renewable energy from wind. There are sufficient areas of land across Wales to enable renewable energy targets to be met without siting wind farms on peatland habitats.

However, in practice, there are a number of wind farm projects coming forward for decision, particularly outside of the Pre-Assessed Areas for wind energy, where the siting choices made by developers have led to a clear tension between peat and wind farms.

Planning policy does have a presumption in favour of renewable energy projects (Policy 17 of the Future Wales, the National Plan 2040), including outside the pre-assessed areas for wind energy, but it seems developers are failing to consider the implications of the S.7 irreplaceable habitats policy as set out in Planning Policy Wales, which needs to be considered alongside Future Wales.

The reasons for the tensions exemplified in the current pipeline of wind energy projects are varied and not uncontentious:

- Some project proposals were developed prior to the current S.7 irreplaceable habitats policy coming into place, although the vast majority of proposals were developed after the policy was implemented.
- Renewable energy developers have claimed there is uncertainty in how to apply the current irreplaceable habitats policy, but this seems to be based on a fundamental misunderstanding of what constitutes an irreplaceable habitat and potentially simply indicates that developers do not support the policy position.
- Renewable energy developers suggest a lack of appropriate pre-application advice from relevant consenting bodies as another reason for poor siting of project proposals – this is a known issue linked to lack of resources in bodies such as NRW.
- The length of time it has taken certain key projects to go through the planning process has also been a cause of significant frustration for developers.

The tensions between our S.7 irreplaceable habitats policy and the current pipeline of wind energy projects have come to a head recently due to a number of projects situated on irreplaceable peat habitat being approved on the basis that renewable energy projects should be considered wholly exceptional. Without intervention, we will swiftly reach a position where it is untenable to maintain the current S.7 irreplaceable habitats policy.

The projects in the current 'pipeline' are at varying stages of development, with the majority being at pre-application stages. This means it should still be possible to make

amendments to proposals to avoid impacts on peat, but this would not be without cost and time implications for developers, and there would be some pipeline sites where it is impossible to avoid peat impacts.

Should the current pipeline of wind farm projects be agreed the impact on Wales' peatland resource would be substantial, negating years of the National Peatland Action Programme restoration activity. The wider implications for the irreplaceable habitats policy would also put other S.7 habitats at significant risk from renewable energy developments, with implications for our ability to meet our biodiversity targets both now under the Global Biodiversity Framework (30x30) but also the future ones we set through the Environmental Governance & Biodiversity Targets Bill.

Options to resolve this tension are set out in Part 5. All options have trade-offs with reputational risk.

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1. Factual Position on the S.6 Env Act Duty & Planning Policy Wales (PPW)

Welsh Ministers have a legal duty under section 6 of the Env Wales Act to embed biodiversity considerations throughout all of their functions. Specifically, the duty requires WG and public authorities 'to seek to maintain and enhance biodiversity in the exercise of their functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as this is consistent with the proper exercise of those functions'.

In Planning Policy Wales, the stepwise approach itself (see annex A) is a means of ensuring a net benefit for biodiversity can be achieved in all circumstances, but it incorporates and works alongside specific and additional elements of policy which are relevant for irreplaceable habitats (and protected sites such as SSSIs).

Action in relation to irreplaceable habitats, such as peatlands, should primarily take place at step 1 of the stepwise approach. The starting point is criterion 1a) which says that avoiding harm is the first priority **and planning authorities will need to be satisfied that any reasonable alternative sites (including alternative siting and design) which would result in less harm, no harm or benefit have been fully considered.**

Criterion 1b) specifically states that **development in irreplaceable habitats is, as a matter of principle, unacceptable and should be avoided and it would be wholly exceptional for development to be justifiable in such circumstances.** Criterion 1b) includes an explanation of the rationale for this position.

In addition, paragraph 6.4.25 specifically states that where peat soil is identified (and which may or may not be an irreplaceable habitat) ***considerable weight should be given to its protection because of its special importance in underpinning and supporting national natural resources such as soil carbon, biodiversity and flood management, and unless significant material considerations indicate otherwise it will be necessary to refuse permission.***

For peats without habitat, such as an afforested site, step 1a) is still engaged, avoidance; step 1b) is disengaged because there are no irreplaceable habitats; and paragraph 6.4.25 is then engaged. The action being to consider avoidance in combination with the 'significant material considerations outweigh' test of paragraph 6.4.25. In effect, this applies a lower test for development need than 1a) wholly exceptional.

2. What are Irreplaceable Habitats:

Irreplaceable habitats are defined as those habitats, including the natural resources which underpin them, which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. These habitats have particular relevance in the UK, which is one of the most nature depleted countries in the world. 1 in 6 species are at risk of extinction and the climate and nature crisis are intertwined. Net zero cannot be achieved without focussing on nature recovery, given that our natural resources provide one of the biggest carbon sinks we have.

Examples of irreplaceable habitats include, ancient woodland and veteran trees, ancient hedgerows, wet woodlands, sand dunes, peatland, species rich grassland, long undisturbed soils, blanket bog, salt marsh and lowland fen.

Issue: Should the irreplaceable habitats policy be disapplied to peat, it means it disappplies to all other habitats falling within this category. In effect, it is not a peat policy; it is a policy to ensure a net benefit for biodiversity can be achieved in all circumstances and in which the most important and vulnerable habitats are protected.

Restoring peatlands is not the same as recreating peatlands. These habitats, which are nearly all degraded to some extent, can be restored to something approaching their target state. Removing or damaging the peat rules that out as an option for present or future generations. The further implication is that the associated habitats, which support unique assemblages of species, will be lost too.

Peat habitats are Section 7 habitats with a Duty – to *take all reasonable steps to maintain and enhance*. The definition of irreplaceable habitats, the contention that development is unacceptable as a matter of principle on such habitats and the use of wholly exceptional in PPW is clearly intended to signal to developers that the emphasis is to avoid choosing to propose schemes in these habitats. This is a clear protection measure to stop developers claiming everything is degraded and reverting to practice which suggests they need not pause to consider carefully the proposing of schemes on such habitats.

3. What PPW Does Not Do:

PPW does not set arbitrary **depth thresholds** for peaty irreplaceable habitats: Section 7 peat habitats are not defined by peat depth. Shallow peats are equally important as deep peats for this purpose and as such irrelevant to defining an irreplaceable habitat.

PPW does not set arbitrary **condition thresholds** for Section 7 peat habitats: 90% of peatland habitats are in varying degrees of poor or degraded condition. The approach in Planning Policy Wales, and Section 7 habitats themselves, are not defined by condition so the vast majority of peatland in Wales will be classed as irreplaceable.

Setting condition thresholds, such as depth, would require a change to the current policy and any amendment to reduce levels of protection would need to be subject to consultation.

4. Implications of Recent Decisions

Recent decisions have been approved for windfarms within, and on, irreplaceable habitats, which involve the removal of irreplaceable habitats (peatland) and its underpinning soil. This has been justified by citing the application of the wholly exceptional test, without weight being given to alternatives and stepwise action of avoidance (policy 1a), and/or without giving considerable weight to the protection of peat (paragraph 6.4.25).

PPW requires consideration of the stepwise approach in sequence and in a specific way and is caveated in order to protect the most important habitats in Wales, particularly those which once excavated will be lost forever.

However, the justification for the decisions is based on a selective application of policy where the full nature of the wholly exceptional circumstances test has not been taken into account. In this sense renewable energy has been considered a wholly exceptional use of land merely because it is required to meet published targets. This does not reflect the specificity of the policy test in relation to irreplaceable habitats and opens the door to renewable energy being justified anywhere and everywhere, even in SSSIs.

Several PEDW planning inspectors have also concluded as part of recent cases, that peatland habitats are not necessarily irreplaceable habitats, although that conclusion was not supported by Welsh Ministers.

It is only a short step to reverting back to previous discredited practice that if a SSSI is not in favourable condition then it is not really worth protecting.

The decision to delegate to PEDW the power to decide applications below 50MW could further undermine the policy given how Inspectors have interpreted and applied planning policy to date.

35 out of 45 wind farm schemes at varying stages of development are expected to have some peat impacts. Officials expect the resulting excavation, compression and degradation of peat by infrastructure to account for between the first 10 and 16 years of the National Peatland Action Programme estimated emissions savings and 2 years

of habitat restoration. There are similar challenges with the number of solar farm applications on the Gwent Levels.

Peat planning casework officials have engaged Trydan Gwyrdd Cymru who have identified a number of development sites where there is interaction with peat. 5 of 6 of their high priority sites are on peat.

5. Options:

A Ministerial Advice Note (MA) will be submitted following the bilateral meeting confirming the option(s) chosen. Should additional work be required to implement an option, a further MA will be required to detail the steps necessary.

Option A - Maintain the integrity of the current S.7 irreplaceable habitat policy, whilst showing WGs clear commitment to renewable energy through facilitating early engagement with developers to avoid potential conflicts.

Objective:

To work with developers at pre-application stages to remove policy conflicts as far as practicable prior to applications being submitted. Up-front, positive action will avoid delays from PEDW requiring the examination of peat impacts throughout the process.

Requirement:

- Commitment from NRW to immediately fill a role / number of roles to support working with developers on designing & siting windfarms to avoid peat impacts ensuring engagement happens at pre-application stage and to avoid inconsistent and late advice to developers and PEDW.
- Internal review (by Planning Division & LNFD) of the schemes that are currently in the system, particularly the schemes which are at pre-application stages (currently 24 out of 45 schemes) to rate them according to whether they can be re-designed to avoid peat impacts or whether they need to be completely re-sited.
- Planning Division & CCES Policy Divisions to work with PEDW to agree how they will support those applications in the system (only 8 are submitted applications, and 13 at statutory consultation stage prior to formal submission) that need to be re-designed so that they can do that without having to completely start the whole application process again.
- Planning Division to liaise with PEDW to ensure the policy is applied as intended, especially where decisions are below the 50MW threshold.
- Publication of the guidance document currently with the Cab Sec for Planning - along with a revised Heads of Planning (HoP) letter from Ministers about the 'package' of measures described above that will help support developers to have high quality applications and decisions as soon as possible.
- LNFD to instruct NRW to prioritise the 3rd update to the peatlands of Wales map to better identify peat soils for developers to use at site selection stage.

- Refusals may be necessary to ensure developers are incentivised to engage in the pre-application process to re-design and re-site infrastructure. i.e. renewable energy cannot consistently be judged to be wholly exceptional through use of step 1b only moving forward without the relative significance of loss of habitat being properly considered under step 1a. Both step 1a and 1b of stepwise should properly be taken into account.

Risk:

Without each step above, the integrity of the policy cannot be maintained and delays in decisions may result. It will require resource and prioritisation by all named parties. Some development may be refused and cost incurred to developers for poor siting choices (which could have been avoided if they had made better choices in the first instance). Some Section 7 peat habitats may be lost where pragmatic compromises are made. Developers may proceed without engaging which will require policy to be enforced thereby setting a clear expectation for the sector.

The State developer, TGC may be caught in the policy. In their focus on developing projects on the Welsh Government woodland Estate, Trydan have limited options for site selection to fully apply the stepwise approach and as such there is a commercial risk.

To shore up the wider policy as far as possible would safeguard protection of biodiversity and ecosystem resilience in line with the Government's current and proposed future legislative framework.

Option B - Retain but the current S.7 irreplaceable but do not apply & enforce it.

Objective:

Maintain the status quo with the implicit objective of maximising wind farm renewable energy delivery but seeking as much mitigation and compensatory measures from energy developers as possible.

Requirement:

- Welsh Government casework peat officials to no longer respond to planning proposals involving peat.
- Commitment from NRW to immediately fill a role / number of roles to support working with developers on designing & siting windfarms to avoid peat impacts as far as possible ensuring engagement happens at pre-application stage; but with emphasis on agreeing mitigation and compensatory measures; and to avoid inconsistent and late advice to developers and PEDW.
- Planning Division to withdraw MA requesting publication of the guidance document currently with the Cab Sec for Planning.

Risk:

This option represents a worst-case scenario because it would have uncertain wider consequences for the irreplaceable habitat policy and uncertain impact on both peat/peatland and wider habitats and protected sites. It would set a clear precedent

that the stepwise approach to obtaining net benefit for biodiversity does not need to be applied. It would not reflect the expert opinion of WG peat casework team or NRW in terms of best practice on peat restoration. It would achieve limited compensatory measures of questionable effectiveness.

This option presents significant risks for the protection of all Section 7 habitats as well as SSSIs themselves. WG's ability to achieve peatland, biodiversity and woodland targets would be significantly weakened. This could also set damaging precedents for any development types affecting SSSIs, irreplaceable habitats or any other section 7 habitats.

Option C – Create bespoke policy for renewable energy and peatlands accepting some loss and damage but seeking Greater Compensatory Measures

Objective:

Ensure there is an approach which reflects the importance of wind farm renewable energy delivery whilst seeking maximum habitat compensatory enhancements, accepting that this will entail loss of irreplaceable peatland habitats.

Requirement:

- Welsh Government casework peat officials to no longer respond to planning proposals involving peat.
- Commitment from NRW to immediately fill a role / number of roles to support working with developers on designing & siting windfarms to avoid peat impacts ensuring engagement happens at pre-application stage; agree mitigation and compensatory measures; and to avoid inconsistent and late advice to developers and PEDW.
- There is an opportunity to develop an independent peat advisory group could be set up approach through setting up a peat advisory group to focus on how to deliver bio-diversity net gain (acknowledging there would be loss of irreplaceable peatland habitats).
- Planning Division to revise planning policy to create a new renewable energy policy in peatlands based on paragraph 6.4.25, exempting renewable energy schemes from applying the 1b) wholly exceptional test and its component consideration of alternatives and avoidance via site selection action at 1a)
- Planning Division to withdraw MA requesting publication of the guidance document that's currently with the Cab Sec for Planning.

Risk:

This option represents a change of policy and would require consultation. It would represent the preference of the development sector and provide them with certainty. It would not reflect the expert opinion of WG peat casework team or NRW in terms of best practice on peat restoration.

Whilst it may have some similar outcomes to option A, given the current pipeline of projects, it is most likely to encourage more renewable energy schemes to come

forward in the wrong locations, embolden a less robust approach to nature protection and compromise the future ability of the planning system to play its role in meeting future biodiversity targets.

In comparison to option B, it may be possible to limit potential loss and damage to peatlands rather than more widely to SSSIs, other irreplaceable habitats and other section 7 habitats. It is likely, however, to increase pressure from other development sectors where need for development is identified, for example housing, to reduce nature protections.

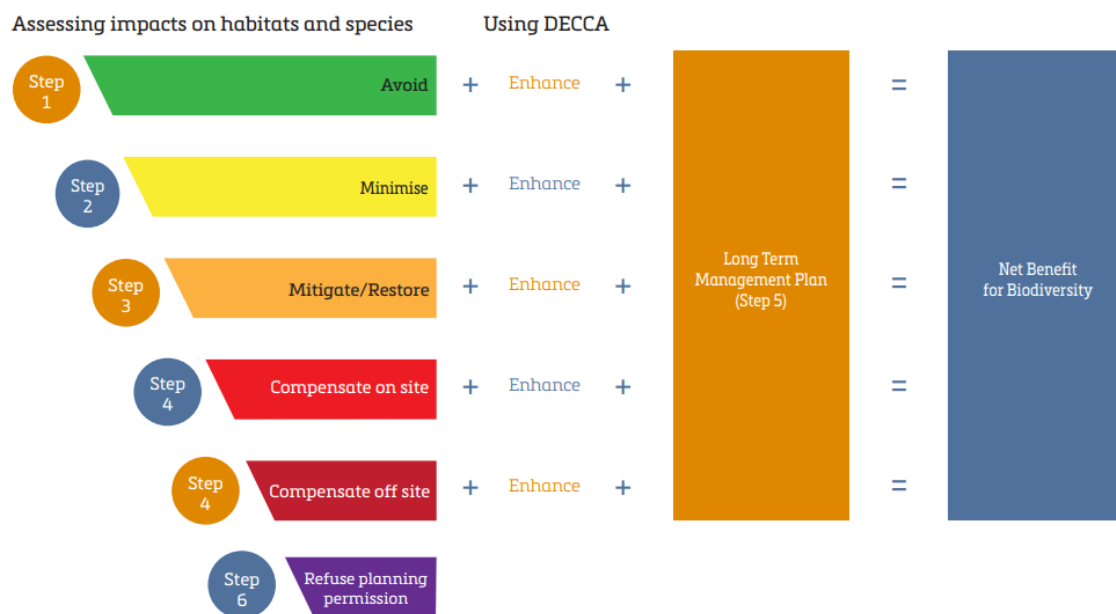
The Gwent levels post construction monitoring study (MA-RE-10345-24) and operational experience by officials cast significant doubt on the effectiveness of the management plans and planning conditions relating to enhancement measures.

No party, whether the Local Planning Authority, Welsh Government or Natural Resources Wales is sufficiently resourced to monitor and enforce conditions.

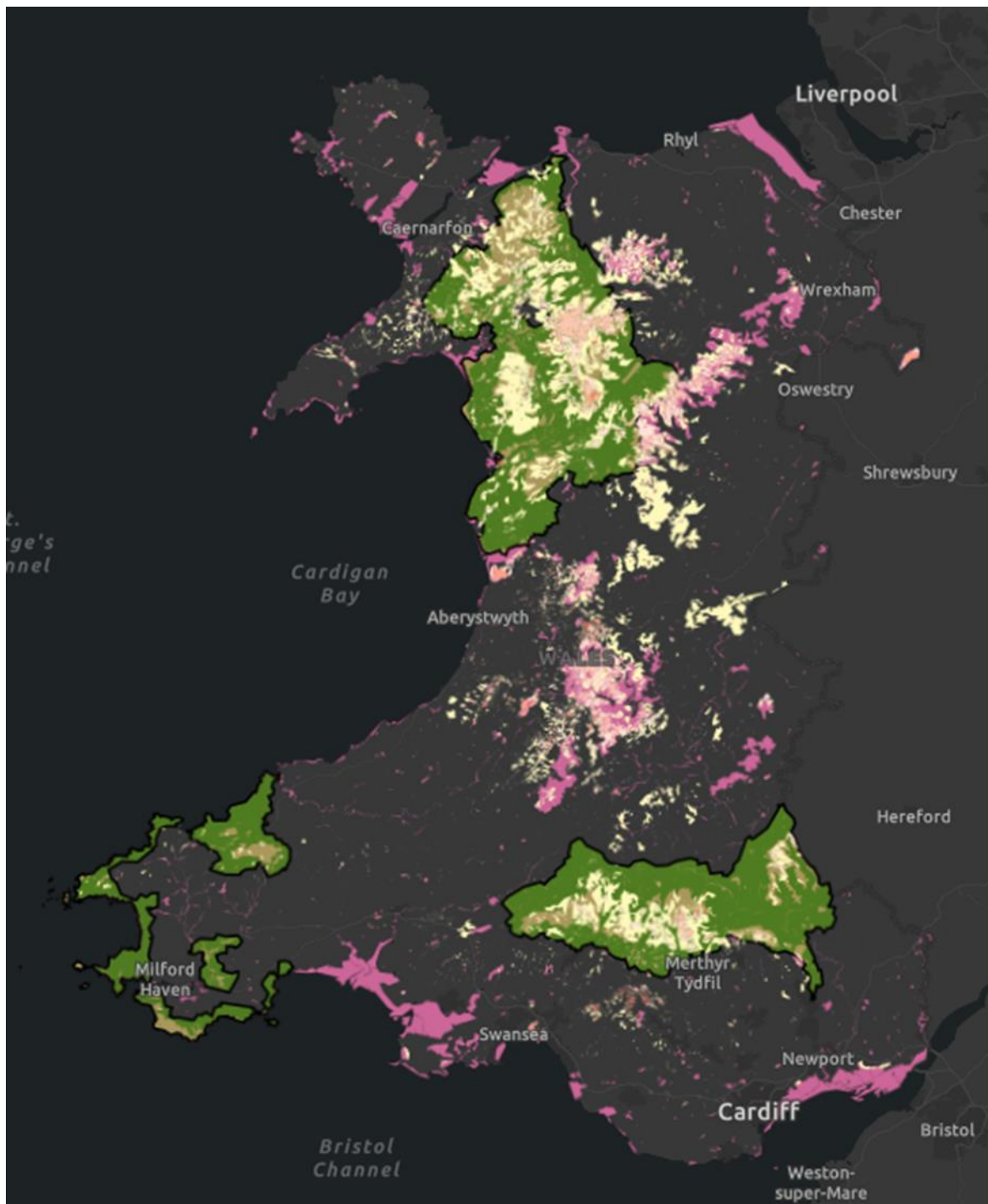
In practice compensatory measures are only likely to be partially effective.

ANNEX A: PPW Stepwise Approach

Figure 12: Summary of the Step-Wise Approach



Annex B: Distribution of Peat Habitats Outside of Designated Sites & Landscapes



Green: National Parks

Pink: SSSIs

Yellow: Peat

Grey: Available Area for Development c.60% of Wales.

Low Estimate:

Officials are confident peat soil is present across 82,156ha (3.9% of Wales). Of this, 59,050ha has a moratorium of no wind farm development (SSSI, National Park, AONB). So, the current 35 wind farm cases are focused on 28% of the national peat resource (23,106ha – 1.2% of Wales).

High Estimate:

If a higher figure is taken for peat habitats, they may be present on 236,254ha (11% of Wales). Of this, 154,000ha has a moratorium of no wind farm development (SSSI, National Park, AONB). So, the current 35 wind farm cases are focused on 36% of the national peatland Section 7 habitat resource (82,200ha – 4% of Wales).

Wind Farm Cases on Peat:

Extraction Compression Volumes /	Number of cases	Categorisation
0m³	10	No Loss
<5,000m³	10	Minor Loss
5,000 to 20,000m³	8	High Loss
20,000 to >100,000m³	15	Very High Loss
Unknow Impact	2	Unknow Impact
Consented Operational	22	On peat of Evidence Score >2