To:

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**WG33507 ‘UCO and GPDO Consultation: Consolidation of the Town and Country Planning (Use Classes) Order 1987 and Town and Country Planning (General Permitted Development) Order 1995**

Thank you for the opportunity to respond to this consultation. These comments refer to the section of the consultation entitled ‘Small-scale, low-risk hydropower’.

**‘Low-risk hydropower’**

The consultation assumes that it is possible to identify which hydropower schemes are ‘low-risk’ but offers no evidence to support that premise. Even ‘very small’ run-of-river schemes involve the installation using large machinery of a pipeline hundreds of metres in length, with the potential for damage to freshwater habitats during construction[[1]](#footnote-1). Even ‘very small’ schemes can run a section of watercourse dry if deliberately or accidentally mismanaged.[[2]](#footnote-2)

Where is the evidence that it is possible to define and identify a ‘low-risk’ hydropower scheme before it has been designed, built and operated? Almost all hydropower schemes have the potential to have adverse effects on rivers, habitats, species and landscape.

All hydropower schemes represent risks to the freshwaters of Wales if they are located in the wrong place, poorly designed, badly built or inappropriately managed. Such outcomes can only be avoided by intervening where necessary, and the planning system provides a key part of the structure for that intervention. **Minimising the risks from these schemes will require better scrutiny rather than less scrutiny.**

The consultation refers to ‘small-scale’ hydro without adequately defining what that means. As proposed ‘small-scale’ would include schemes with a pipeline up to 1.5km in length. To suggest that such a structure and its associated works are ‘small-scale’ and may not require planning permission is at best reckless. Smaller schemes in Snowdonia in recent years have resulted in significant damage in their construction and operation phases.

Granting ‘permitted development’ status to some hydropower developments would remove them from the scrutiny they currently receive in the planning process. This would offer fresh new opportunities for unscrupulous developers and operators to cut corners, damage our environment and to do so with greater impunity.

The basic format of high-head run-of-river hydro schemes is to divert water out of the river channel and through a pipe over significant distances. This carries inherent risks to landscape, habitats and biodiversity. These risks are spread across three separate phases – design, construction and operation – each of which requires scrutiny to prevent damage to landscape, biodiversity and/or protected sites.

**The consultation is therefore in error in assuming that a scheme which appears to be ‘low risk’ at the design stage will necessarily also be ‘low risk’ when it is built and when it is in use.**

Natural Resources Wales, at the inception of the research from which this consultation derives, proposed this scope for considering extending permitted development rights:

*‘at present we think that an upper limit of 4kW may be appropriate.’[[3]](#footnote-3)*

That recommendation appears to have been ignored in drawing up this consultation document. The current proposals place no restriction on power output of schemes to which permitted development rights would apply. As a consequence the proposals here have the potential to remove safeguards and planning controls from schemes which are orders of magnitude greater than the limit suggested by NRW.

Snowdonia contains the highest concentration of hydro schemes in Wales for the same reasons that it is home to important oceanic ‘rainforest’ gorges and river valleys – the combination of steep sections of upland rivers and streams with high average rainfall. These internationally important habitats are a conservation priority because they are extremely sensitive to a range of impacts and this sensitivity is recognised by the scale of investment to protect them[[4]](#footnote-4). Many of the habitats along these rivers are dependent on high humidity and are genuine biodiversity hotspots, supporting hundreds of species in pockets of pristine habitat. For this reason they can be objectively assessed as being of national importance.

If acted upon the proposals in this consultation risk getting the priorities badly wrong. Long term protection of freshwater resources – rivers and their habitats, species and landscape features - requires commitment and consistency. This should outweigh any desire to offer a short term easement for the industry which uses and sometimes abuses those resources.

In Snowdonia there are examples of damage being caused when hydropower schemes have been badly implemented or inadequately policed. These include criminal acts of pollution of freshwater and deliberate over-abstraction of water during periods of low flow. These issues cannot be addressed by removing the controls which come from the planning system. The fact that those controls have themselves are not always sufficient is an argument for more and better regulation and enforcement, not for abandonment of any attempt to prevent and control the damage.

**Consultation questions and responses**

**Q55 Do you agree with the principle of establishing permitted development rights for small scale, low risk hydropower developments in Wales?**

No, because evidence and experience suggest that hydropower developments in Wales need tighter regulation through both planning permission and water abstraction licensing. They require proper cumulative impact assessment, more stringent scrutiny in the planning process, more frequent monitoring and more robust enforcement.

In the absence of such tightening of controls Welsh rivers, designated habitats, protected species and important landscape features will continue to be damaged and/or destroyed by hydro schemes, especially those constructed and run by cowboys and criminals whose sole interest is in generating money rather than energy.

The proposal to remove some schemes from the requirement for scrutiny in the planning process would be a backwards step, and is not supported by evidence or experience[[5]](#footnote-5).

**Q56 Do you agree that new permitted development rights should be accompanied by practice guidance? If yes, what aspects should the guidance cover?**

No, because practice guidance would serve no useful purpose. Where permitted development applied there would be no means of ensuring adherence to such guidance and no recourse for failure to adhere to guidance. There is no mechanism for attaching planning conditions if there is no requirement for planning consent. Without conditions there is no mechanism for compliance and enforcement.

Practice guidance would be no more than a layer of greenwash and would not provide any effective protection for rivers, habitats, species or landscape features. The criminals and cowboys who form a small but destructive subset of the hydro industry would take no more notice of practice guidance than they currently do of planning conditions. What is needed is tighter regulation, enforcement and proper punishment for hydro developers or operators who damage our freshwater environment.

**Q57 Do you agree with the concept to allow permitted development rights for small scale, low risk Hydropower schemes in National Parks and AONBs?**

No. There is no evidence that such schemes can ever be safely regarded as ‘low-risk’ so this consultation is based on a false premise. All freshwater environments are important, so it is not acceptable to allow permitted development rights for hydropower schemes in any part of Wales. However it is particularly inappropriate for permitted development rights to apply in National Parks and AONBs given that such developments could have significant landscape impacts. Allowing permitted development rights for hydropower schemes would open the door wider to unscrupulous developers like those who have already recklessly damaged rivers when building and operating small scale hydro schemes.

Requiring planning permission allows full consideration of the potential impacts of any proposals and ensures that the decisions made take account of National Park and AONB purposes. Requiring planning permission does not prevent such development taking place where appropriate but makes it possible for cumulative impacts to be managed and monitored effectively and for inappropriate, damaging development to be prevented. Allowing the unmanaged proliferation of small-scale hydropower schemes could cause significant damage to the environment so is particularly inappropriate in areas which are designated for their natural beauty, wildlife and recreational opportunities.

**Q58 Do you agree with those areas where permitted development rights for hydropower schemes would not apply?**

No, because the exclusions proposed are inadequate. The proposals would make it possible for hydro schemes with above-ground pipelines up to 1.5km long to be built within National Parks, AONBs, or indeed elsewhere in Wales without any requirement for planning permission. Such schemes have landscape scale impacts during construction even when they are carefully implemented.

Similarly the list of proposed restrictions implies that if a river is not located within a site designated nationally or internationally for habitats and species then it does not require the protections afforded by the planning process. This is a remarkable failure of understanding of the simple truth that freshwater habitats and species everywhere in Wales are sensitive and highly connected. They are sensitive to physical disturbances, to the interruption of geomorphological process and to pollution in its many forms including fine sediment pollution. That is in the nature of freshwater systems. When works to build the small Afon Las hydro scheme went badly wrong some of the impacts were felt in a freshwater SSSI some kilometres downstream of the site.[[6]](#footnote-6)

**Q59 Do you agree with the proposed non-spatial limitations where permitted development rights for hydropower schemes would not apply?**

No, because the list of non-spatial limitations is inadequate. It makes no reference, for example, to cumulative impacts, fails to define to which primary or secondary nature conservation legislation it refers, or to stipulate time limits.

Remarkably the list of limitations makes no mention whatsoever of landscape, visual amenity, recreation or access considerations and therefore fails to take account of the statutory purposes of National Parks.

This is a serious problem not just in National Parks and AONBs where such considerations are statutory requirements but for the whole of Wales. Most landscapes in Wales warrant the protections which the planning process has evolved to afford. Indeed it is not long since Welsh Government published a report which argued that all landscapes have special qualities.[[7]](#footnote-7) Special qualities cannot be protected in the long-term interest if development is encouraged to go unregulated.

**Q60 Do you agree with these conditions relating to minimising the visual / environmental impact of the intake structures and the header tank elements?**

No, the conditions relating to visual/environmental impact of intake structures and header tank elements are inadequate. The conditions as proposed would allow for extremely visually intrusive and environmentally damaging infrastructure to be installed in a National Park without planning permission. This is contrary to the statutory purposes of National Parks. The only way to ensure that the visual and environmental impacts of such schemes are minimized is for them to be managed and monitored properly through the planning system. This means that planning permission must be required for all such schemes.

The intake structures for these schemes are generally located in significant and often pristine upland or woodland landscapes which are highly sensitive to the imposition of built structures where there may previously have been none. Careful and detailed consideration of the siting, design, size, scale, materials and construction is needed for these features. For example the proposal that header tanks be buried is of no use if there is no means of controlling the impacts from the work of burying it in both long and short term. Badly planned and executed work can leave scars for many years to come. The fact that structures are prefabricated offers no assurance that they will not be visually intrusive and inappropriate in their appearance or their siting.

The current proposals would open the door to developments without any of the necessary scrutiny. That would inevitably result in more intrusive prefabricated concrete structures appearing in our most beautiful upland and woodland landscapes, with no means to control or rectify the results if things go wrong for decades to come.

**Q61 Do you agree with these conditions to minimise the visual impact of the pipelines?**

No, the conditions as proposed would allow for extremely visually intrusive and environmentally damaging infrastructure to be installed in a National Park without planning permission. This is completely contrary to the statutory purposes of National Parks and is a significant risk to the habitats and species in these areas as well as the significant benefits that tourism and recreation provides, including the economic benefits generated by beautiful landscapes. The only way to ensure that the visual and environmental impacts of such schemes are minimized is for them to be managed and monitored properly through the planning system. This means that planning permission is needed for all such schemes.

As proposed in the consultation a scheme could proceed without any requirement for planning permission which would result in a 1.5km length of plastic pipeline running above ground on a hillside in a National Park, an AONB or many other parts of Wales. The same proposal would also allow a developer to bury that same 1.5km pipe using a large excavator close to a river channel, without any planning control over the methods used or the scheme design. Both scenarios are inappropriate and unacceptable.

**Q62 Do you agree with these conditions to minimise visual / amenity / environmental impacts of the powerhouse and outfall?**

No. New buildings in isolated rural locations require proper planning scrutiny to ensure that they are appropriate in terms of location, site impacts, design, scale, size, and materials choice. It is already the case that some hydro scheme turbine houses are poorly built and often left uncompleted. There is no scope to remove them from the consideration of the planning process.

**Q63 Do you agree with these miscellaneous conditions relating to tree felling, water course crossings, construction practices and decommissioning?**

No. The conditions are inadequate.

In Snowdonia in recent years significant damage has been caused to **trees of landscape importance** but which do not have the benefit of TPO or ASNW status. To remove the protection of the planning process from all other trees would be likely to result in damage to valued landscape trees and an important biodiversity resource.

**Watercourse crossings** are by definition high risk operations and need full and integrated scrutiny at the project design stage – this can only be done through the planning process where the project is looked at as a whole as well as in its constituent parts.

The suggestion that schemes would be **‘compliant’** in relation to NRW guidance is misleading. Compliance is of questionable relevance where permitted development rights apply. Compliance implies the possibility of enforcement, but where permitted development rights exist, as there will be no mechanism by which conditions can be brought to bear if the scheme does not require planning permission in the first place.

The final proposal is bewildering - that the planning authority and planning process will be involved in the **decommissioning** of a hydro scheme. Is this to ensure that the decommissioning work is done in a planned and sensitive way so as to avoid damage to landscape, habitats and biodiversity? If so why would the same planning authority have no role in the commissioning of the same development? This appears highly illogical. The planning authority must be fully involved in the ‘commissioning’ as well as decommissioning of such developments.

1. Downstream pollution impacts on a SSSI from construction of a hydro scheme in Snowdonia

   [https://www.dailypost.co.uk/news/north-wales-news/firms-fined-after-snowdonia-beauty-13906131](https://www.dailypost.co.uk/news/north-wales-news/firms-fined-after-snowdonia-beauty-13906131%20) [↑](#footnote-ref-1)
2. Snowdonia hydro scheme operator caught deliberately taking too much water from the river <https://wwtonline.co.uk/news/hydro-electric-operator-fined-for-diverting-watercourse> [↑](#footnote-ref-2)
3. Minutes of ‘Low risk small scale Hydropower Research Inception Meeting 21st June 2017’ Natural Resources Wales ref. ATISN 12436 [↑](#footnote-ref-3)
4. August 2018: £8.6million project to protect Celtic rainforests <https://www.bbc.co.uk/news/uk-wales-45325482> [↑](#footnote-ref-4)
5. The ‘research’ study produced by Dulas Ltd, itself a commercial hydro developer, is based almost exclusively on wish-lists of the hydro industry with whom they consulted extensively. The study’s conclusions and the consultation proposals derived from them ignore the responses from local authorities, the majority of whom were clearly opposed to extending PDR. No independent conservation bodies were consulted, or if they were their views are not mentioned in the report. [↑](#footnote-ref-5)
6. Downstream pollution impacts on a SSSI from construction of a small scheme in Snowdonia

   [https://www.dailypost.co.uk/news/north-wales-news/firms-fined-after-snowdonia-beauty-13906131](https://www.dailypost.co.uk/news/north-wales-news/firms-fined-after-snowdonia-beauty-13906131%20) [↑](#footnote-ref-6)
7. <https://gov.wales/docs/desh/publications/170508-future-landscapes-delivering-for-wales-en.pdf> [↑](#footnote-ref-7)