

Response of the environmental NGOs to the RIES (Report on the Implications for European Site – [PD-016])

Wylfa Newydd Development Consent Order EN10007

Interested Parties North Wales Wildlife Trust (20011639)

National Trust (20010995)

The Royal Society for the Protection of Birds (20011586)

## Introduction

- 1.1 Thank you for providing the opportunity to comment on the recently published RIES (Report on the Implications for European Sites, 27 March 2019 ([PD-016]). The following comments represent the views of the environmental NGOs (the eNGOs, North Wales Wildlife Trust – NWWT, National Trust and the Royal Society for the Protection of Birds – RSPB).
- 1.2 The eNGOs conclude that the RIES identifies the Natura 2000 sites where dispute and disagreement between the IPs (Interested Parties) and the Applicant remain. It accurately represents the views and points raised in written submissions to the Examining Authority and in oral presentation at the Hearings, with some minor unsubstantive mis-attribution/errors, some of which are highlighted below.
- 1.3 The eNGOs note that the contents of the RIES will not be altered following this consultation, but that any response from the IPs and Applicant will be used in the formulation of the recommendations to the Secretary of State (RIES  $\diamond$ 1.1.4).
- 1.4 The eNGOs agree with and welcome the inclusion of the statement: -
 

*“NRW and the environmental NGOs do not agree with the Applicant’s conclusion of no adverse effects on the Morwenoliaid Ynys Môn/Anglesey Terns SPA. NRW do not agree with the Applicant’s conclusion of no adverse effects on the Aber Dyfrdwy/Dee Estuary SPA (see Stage 2 Matrices 2 and 3 for detailed document references).”*

RIES  $\diamond$  4.2.11

- 1.5 The scientific arguments and interpretation of the evidence base is well reflected within the RIES’s Annex 4<sup>1</sup> Stage 2 Matrices (Matrix 1 & 2), however the eNGOs wish to highlight a number of factors which when amalgamated reinforce this overarching conclusion. Many of these factors also apply to Cemlyn Bay SAC, which (as the RIES correctly identifies  $\diamond$  4.2.10) the eNGOs also differ from the Applicant’s conclusions regarding adverse effects on site integrity: -

## Cumulative & synergistic effects on the SPA terns

- 1.6 The description within the RIES accurately identifies the impact pathways of relevance (RIES  $\diamond$  2.3.6 for the Anglesey Terns SPA and  $\diamond$  2.3.7 for Cemlyn Bay SAC), albeit that the anthropogenic disturbance impact pathway of visitors<sup>2</sup> has not been specifically identified for either the SAC or the SPA.
- 1.7 Within the presentation of the evidence in the RIES it is very difficult to convey the overarching conclusion that has been expressed consistently by the IPs (NRW and eNGOs), i.e. that the effects of each impact pathway of the proposal will not only act in isolation on the designated features of the Natura 2000 sites, but they are a sequence of

<sup>1</sup> There is a typographical error on the title page for Annex 4 containing the Stage 2 matrices.

<sup>2</sup> Visitor/worker/recreational disturbance is discussed at Stage 2 Matrix 1 footnote ‘v’ for Cemlyn SAC and Stage 2 Matrix 2 footnote ‘a’ for Anglesey Terns SPA. However, this is not reflected within the main RIES report.

effects that will act together either in a cumulative manner or synergistically. These effects will occur over a number of breeding seasons throughout a lengthy construction period.

- 1.8 Much of the discussion within the Issue Specific Hearings of the Examination focused on Sandwich tern, but it is of importance to recognise that this is not the only designated feature of the Anglesey Terns SPA and that the impacts will be felt by the other SPA breeding species currently present (i.e. common tern and Arctic tern) and may also hinder the chances of re-establishing Roseate tern (also a designated feature of the SPA) via the *Life* funded project. Each of these designated species have their own ecological habitat requirements, breeding and feeding behaviour.
- 1.9 Consequently, when taking account of the conservation objectives of each species, as required under the Habitats Regulations, it necessitates consideration of each species' ecological status as part of the entire breeding assemblage for the Anglesey Terns SPA. Mitigation measures – voluntarily adopted or not – should be devised accordingly (see comments below under Mitigation). The eNGOs, along with NRW, have been extremely clear in their collective view about how the impacts could lead to a reduction in breeding success and/or colony abandonment for both common tern and Arctic tern<sup>3</sup>, in addition to Sandwich tern.

### Uncertainty – beyond reasonable scientific doubt

- 1.10 The RIES quite rightly identifies and evidences the strength and depth of the disagreement between the IPs (NRW and eNGOs) and the Applicant in relation to the degree of confidence with which the Applicant has drawn their conclusion of no adverse effect on integrity (AEOL) of the European sites. The Applicant has maintained the view consistently that their assessments have been precautionary (worst case) and that the scientific literature supports their conclusions.
- 1.11 Both NRW and the eNGOs disagree with this conclusion and the optimism of the Applicant that the evidence supports the Applicant's view beyond reasonable scientific doubt. Both Interested Parties draw attention to the Precautionary Principle and its application within the legal context<sup>4</sup> and throughout the decision-making process<sup>5</sup>.
- 1.12 It is most strongly suggested by the eNGOs that this is a critical and substantive matter that the Examining Authority should draw attention to in their recommendations to the Secretary of State (SoS) and likewise should be significant in informing the SoS's ultimate decision.

### Mitigation

- 1.13 The RIES accurately identifies the advice and concerns of the IPs (NRW and the eNGOs) in relation to the proposed mechanisms to ameliorate impacts at both the Anglesey Terns SPA and Cemlyn Bay SAC. It is essential to recognise that the package of mitigation measures is complex and there is disagreement as to how these measures might be secured, their effectiveness and demonstration that they are Best Available Technique/Technology (BAT). There is no comfort<sup>6</sup> about their implementation and the

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<sup>3</sup> See RIES Annex 4 Stage 2 Matrix 2 footnotes 'o' and 'aa'. The eNGOs indicated consistently within the Examination & representations [REP2-348 and all subsequent] that conclusions drawn are regarding impacts to tern species, but that **in addition**, the eNGOs advised that the establishment period was too short to encompass common tern and Arctic tern ecological requirements during the breeding season.

<sup>4</sup> NRW Deadline 7 submission of Issue Specific Hearings [REP7-012 o 5.1.4].

<sup>5</sup> eNGOs Deadline 4 submission of Issue Specific Hearings [REP4-044] NWWT and [REP4-038] National Trust, Agenda Item 3a.

<sup>6</sup> Comfort here is used in the planning context.

reporting mechanisms or enforceability once construction commences and throughout the lifetime of operation for some impacts<sup>7</sup>.

1.14 Disagreement with the eNGOs remains in key areas, despite updated versions of control documents being produced during the Examination, up to and including Deadline 8. In summary the RIES identifies the following matters to which the eNGOs make additional comment in relation to their appropriateness with respect to the guidelines of the Precautionary Principle and risk management: -

- **Noise and visual mitigation at the breeding site** – This is not BAT in terms of the accepted bird breeding season (March – August inclusive<sup>8</sup>). Notwithstanding this, what is proposed does not accommodate the specific ecological requirements of all the tern species which are designated features of the Anglesey Terns SPA.
- **Reactive fly-up response measures** – This is a novel mitigation measure, which is not BAT, with an untested mechanism for implementation in relation to breeding birds<sup>9</sup> and their behavioural reactions.
- **Noise and visual disturbance in the marine environment** – The RIES reflects the eNGOs' position in relation to Sandwich tern: -

*“The environmental NGOs raised concerns about the visual impacts and barriers resulting from the marine works in combination with the visual [noise<sup>10</sup>] disturbance and does not feel that there are any measures which could be used to mitigate these effects ([REP5-075] and [REP5-076]).”*

This lack of viable mitigation measures (BAT or otherwise), is equally applicable to common and Arctic tern, not just Sandwich tern, whilst it is caveated that there are differences in commuting routes between the species<sup>11</sup>.

- **Workforce Management Strategy (WMS)<sup>12</sup>** – Both NRW and the eNGOs<sup>13</sup> have significant concerns about this mechanism, as reflected in the RIES. The National Trust and NWWT are particularly concerned about the impacts of visitors – be they workforce, visitors or other recreational users – to the Cemlyn Nature Reserve (SAC and SPA) in the absence of other visitor management strategies and the uncertain deliverability of a Visitor Centre.
- **Monitor & Adaptive Management approach to Esgair Gemlyn (Cemlyn Bay SAC)** – Although significant progress has been made in the latter stages of the Examination, the eNGOs<sup>14</sup> remain concerned about the level of detail and implementation of this scheme, and the lack of acknowledgement that in the event of a catastrophic breach the Applicant would provide an appropriate proportion of any remediation costs<sup>15</sup>.

<sup>7</sup> For example, but not exclusively, Esgair Gemlyn in relation to its importance to the Anglesey Terns SPA in maintaining tern breeding habitat.

<sup>8</sup> See National Trust [REP4-038] and NWWT [REP4-044].

<sup>9</sup> Horizon Deadline 7 Response to Issue Specific Hearings ([REP7-001] ~ table at 1.1.1) Written summary of Horizon's oral submission at the third ISH on Biodiversity and HRA, where it is stated that this approach was used at the Olympic Park, but it was consequently acknowledged in the ISH that this was in relation to noise at human receptors.

<sup>10</sup> It is assumed that there is a typographical error in this statement as visual impacts are mentioned twice making the statement tautological.

<sup>11</sup> See RIES Annex 4 Stage 2 Matrix 2 footnote 'a' (Visual Impacts 3<sup>rd</sup> paragraph) for Sandwich tern, which is applicable to footnote 'o' for common tern and 'aa' for Arctic tern, where the differences in commuting routes is acknowledged, but the RIES implies that should mitigation be possible it is appropriate across all species.

<sup>12</sup> RIES Annex 4 Stage 2 Matrix 1 footnote 'v' Cemlyn Bay SAC and Matrix 2 footnote 'a' Anglesey Terns SPA.

<sup>13</sup> In this matter the RSPB has indicated that they have deferred to National Trust and NWWT.

<sup>14</sup> In this matter the RSPB and NWWT have indicated that they have deferred to the National Trust's expert.

<sup>15</sup> National Trust and NWWT Deadline 7 submission [REP7-009 ~ 4.2.7.5].

- **The creation, phasing and restoration of Mound E** – Whilst some adjustment has been made during the Examination, this is an issue which the National Trust and NWWT have consistently indicated could be adjusted (further) to provide for mitigation not only to Cemlyn Bay SAC's water quality and surface water run-off but also other material considerations before the Examining Authority.
- **Section 106 Schedule 11 Environment Fund for Cemlyn Resilience** – The reliance on the application for competitive funds is, in the eNGOs' collective view, not an appropriate mechanism for securing what is considered to be additional (and, in our view, essential) elements of European site mitigation.

1.15 It is noteworthy that NRW's Deadline 8 response concludes [REP8-080 ∞ 1.1.25] in relation to Horizon's alternative solutions report [REP5-044]: -

*"Notwithstanding our [NRW's] comments above, we would however make clear that, the only alternative solution that NRW as the ANCB considers would potentially not have an adverse effect on the integrity of Anglesey terns SPA would be solution no 19 (Avoid blasting and construction during the tern breeding seasons). We note in Table 5-2 that this solution is ruled out as it would not meet/deliver the Project need or objectives."*

1.16 It is strongly recommended that it is NRW's Deadline 8 conclusion which is used in the recommendations to the Secretary of State. This most recent commentary from NRW goes further and is not entirely in accord with the RIES's summary of the Interested Parties' positions. The RIES states: -

*"Overall, the position of NRW and the environmental NGOs is that it is unlikely that any mitigation measures would be sufficient to support a conclusion of no adverse effects on integrity resulting from noise and visual disturbance (see [REP2-325] and [REP5-081] for NRW comments and [RR-084], [REP2-056], [REP2-358] and [REP6-046] for RSPB comments, [REP6-049] for NT comments and [REP6-052] for NWWT comments)."*

### Compensation package [REP5-046]

1.17 The eNGOs note [REP8-080 ∞ 1.1.3 and 1.1.14] that the Applicant is due to submit a further update and more detail on the Compensation Package [REP5-046] at Deadline 9 (10 April 2019). This information is to be submitted very late in the Examination process and will allow only limited time for scrutiny by Interested Parties before the close of the Examination.

1.18 As a result, it has not been possible for either the Examining Authority or the IPs to comment prior to the preparation of the RIES.

1.19 The eNGOs intend to provide a response on the suitability of this updated proposal at Deadline 10 (17 April 2019).