

The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

10 Ebrill / April 2019

Dear Sir/Madam,

DEADLINE 9 SUBMISSION

GORSAF BWER NIWCLEAR ARFAETHEDIG WYLFA NEWYDD / PROPOSED WYLFA NEWYDD NUCLEAR POWER STATION

RE: NATURAL RESOURCES WALES' DEADLINE 9 SUBMISSION

This letter comprises the following submission from NRW:

- i. NRW's comments on the Report on the Implications for European Sites – see [Annex A](#);
- ii. NRW's update on, and further advice where appropriate, on actions listed in NRW's Deadline 7 submission – see [Annex B](#);
- iii. NRW's responses to the Examining Authority's third round of written questions (issued on 3/4/2019) – see [Annex C](#);
- iv. A copy of the joint position paper between the IACC, NRW and Welsh Government with regard to co-ordinated working on the discharging authority role in the Intertidal Area – see [Annex D](#).

The comments provided in this submission comprise NRW's response as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'interested party' under s102(1) of the Planning Act 2008.

In addition to being an interested party under the Planning Act 2008, NRW exercises functions under legislation as detailed in the cover letter of NRW's Deadline 2 Written Representations [REP2-325]. For the purpose of clarity, comments from NRW Permitting Service are noted as such and are without prejudice to the separate determination of those processes; all other comments pertain to NRW's advisory role.

Please do not hesitate to contact Bryn Griffiths should you require further advice or information regarding these representations.

Yours sincerely



Rhian Jardine
Head of Development Planning and Marine Services
Natural Resources Wales

[CONTINUED]

ANNEX A – NRW’S COMMENTS ON THE EXAMINING AUTHORITY’S REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

1. Introduction

- 1.1.1. Annex A provides NRW’s advice to the Examining Authority’s (ExA) Report on the Implications for European Sites (RIES). We note that, as stated in paragraph 1.1.4 of the report, that “*it is issued to ensure that Interested Parties, including the statutory nature conservation body (Natural Resources Wales (NRW)), are consulted formally on Habitats Regulations matters*”.
- 1.1.2. Section 2 below provides our advice in relation to Special Areas of Conservation (SACs) while section 3 provides our advice in relation to Special Protection Areas (SPAs). We provide advice on specific sites below due to their proximity to the Wylfa Newydd Project and/or the potential for adverse effects. We also summarise NRW’s advice on other SACs/SPAs and Ramsar sites in Wales – see sections 2.3 and 3.3.
- 1.1.3. NRW provide advice below only where we consider it is required and where it is considered helpful. Where NRW has not provided specific comment then it can be concluded that NRW is in agreement with the tables in the RIES.
- 1.1.4. Please note, the advice contained in Annex A, unless otherwise stated, is NRW’s advice in its Appropriate Nature Conservation Body role under the Conservation of Habitats and Species Regulations 2017, and NRW’s role as a statutory party under the Planning Act 2008. The advice provided is based on the information provided to date as part of the DCO application and through its Examination.
- 1.1.5. Section 2.1.3 of the RIES refers to [REP7-001] and highlights that the “*Environmental Permits concerning combustion activity and water discharge activities have been withdrawn*”. For clarity, please note that [REP7-001] states that the Applicant has “*withdrawn the Environmental Permit Applications to operate a combustion activity, a water discharges activity and a radioactive substances activity*”. As stated in paragraph 5.7.3 of NRW’s Deadline 7 submission [REP7-012], NRW’s Permitting Service considers that the removal of the three operational permits raise challenges with respect to delivery of a total effect Habitats Regulations Assessment to support its determination of current and future permit applications and that it is currently considering those implications. NRW Permitting Service draws the ExA’s attention to paragraph 4.10.8 of EN-1.

- *Control documents*

- 1.1.6. The RIES states in paragraph 2.3.3 that “*NRW’s view is that there is insufficient detail in the control documents*”. Paragraphs 2.3.1 of the RIES states that the control documents referred to are: the Code of Construction Practice (CoCP), the Sub-Codes of Construction Practice (Sub-CoCP) and the Code of Operational Practice (CoOP). NRW highlighted its concerns on the insufficient detail in its

Deadline 2 [REP2-325] and Deadline 4 [REP4-039] submissions. At Deadline 5 the Applicant made a number of amendments to its control documents and included substantial additional information. The Applicant also made it clear in the control documents where detailed measures may be more appropriately secured under a separate consenting regime.

- 1.1.7. As a result of the amendments to the control documents, a number of NRW's concerns have been addressed, however it was not possible to update the Statement of Common Ground (SoCG) by Deadline 6 for all those matters. Paragraph 3.1.3 of the RIES report refers to the 'final draft' Statement of Common Ground between the Applicant and NRW that was submitted at Deadline 6. The SoCG was to be issued as a 'final draft' because, in the time available for review of the draft SoCG, it had not been possible to reach full agreement between both parties that the document was a mutually agreed draft. However, at Deadline 8 the Applicant submitted an updated SoCG which can be confirmed as being a 'final agreed' SoCG.
- 1.1.8. In summary, NRW is now satisfied that there is sufficient detail in the control documents (which have been updated again at Deadline 8) and consider that an additional Requirement for approval of detailed versions of the control documents is not required. The only exception to this is in relation to the Anglesey Terns SPA. As detailed further below, NRW have outstanding concerns with respect to the Anglesey Terns SPA. However, we expect additional information at Deadline 9 which will include an additional Requirement (as a securing mechanism), as well as a 'Tern Compensation Strategy' that will be incorporated into the Sub-CoCP(s).

2. Special Areas of Conservation (SACs)

2.1. Bae Cemlyn / Cemlyn Bay SAC

- *Alteration of coastal processes and hydrodynamics*

- 2.1.1. Paragraph 2.3.8 of the RIES states that NRW is "*satisfied that the Applicant's proposals for monitoring and if necessary, adaptive management provide a suitable measure to avoid adverse effects on the integrity of the SAC as a result of the effects on Esgair Cemlyn (subject to certain amendments)*". NRW's position is also accurately reflected in Stage 2 – Matrix 1 (Note w.).
- 2.1.2. Further to NRW's advice at Deadline 7 [REP7-012], and a telecon with the Applicant on 18/3/2019, an updated Marine Works Sub-CoCP [REP8-051] was submitted at Deadline 8 which addressed the amendments that NRW had advised.
- 2.1.3. NRW can therefore confirm that it considers, in view of the commitments identified in the Marine Works Sub-CoCP and the information submitted as part of the DCO process, that the marine works will not have adverse effects on the integrity of Cemlyn Bay SAC.

- *Changes in marine water quality*

2.1.4. Based on the information submitted as part of the DCO process, NRW advises that changes in marine water quality as a result of the Wylfa Newydd project will not have adverse effects on Cemlyn Bay SAC. There may be aspects of marine water quality that may be more appropriately assessed as part of an Environmental Permit (Radioactivity Substances Regulations, construction water discharge, and operational water discharge) and/or Marine Licence application.

- *Changes in terrestrial water quality (Mound E drainage)*

2.1.5. Stage 2 – Matrix 1 (Note **b.**) refers to NRW's representations with regard to the Mound E drainage and any implications for Cemlyn Bay SAC. Further to NRW's Deadline 5 submission [REP5-081], the Applicant submitted an updated Main Power Station Site Sub-CoCP at Deadline 5 [REP5-022].

2.1.6. As detailed in paragraph 5.2.8 of NRW's Deadline 7 submission [REP7-012], following review of the updated Sub-CoCP, NRW is now satisfied that the Sub-CoCP provides sufficient information to demonstrate that the works on Mound E will not have adverse effects on the integrity of Cemlyn Bay SAC.

- *Changes in surface & groundwater hydrology*

2.1.7. As stated in Stage 2 – Matrix 1 (Note **b.**), in view of the natural fluctuations in salinity in the lagoon, NRW agree with the Applicant's conclusion that changes in surface water and groundwater flows predicted in [APP-050] are unlikely to affect the functioning of the lagoon.

- *Changes in air quality*

2.1.8. In relation to construction-related emissions (construction plant, machinery and marine vessels), NRW is satisfied that the Wylfa Newydd project will not have adverse effects on Cemlyn Bay SAC. This conclusion was stated in paragraph 7.16.4 of NRW's Deadline 2 submission [REP2-325] and is reflected in Stage 2 – Matrix 1 (Note **g.**) of the RIES.

2.1.9. In relation to operational (combustion) emissions, as highlighted in NRW's Deadline 2 submission [REP2-325], we consider the operational combustion emissions may be more appropriately assessed by NRW Permitting Service as part of the Operational Combustion Installations permit application. As explained in section 1.1.5, this permit has now been withdrawn.

2.1.10. In relation to dust, NRW requested additional clarification from the Applicant on the dust monitoring proposals (paragraph 2.2 of Deadline 7 [REP7-012]). On 20/3/2019, NRW had a telecon with the Applicant which provided clarification and addressed NRW's concerns. This is reflected in the final agreed SoCG [REP8-018]. NRW can therefore confirm that, in view of the mitigation provided in the CoCP [REP8-047] and Main Power Station Site Sub-CoCP [REP8-049] submitted

at Deadline 8, that construction generated dust will not have adverse effects on Cemlyn Bay SAC.

2.1.11. The RIES report, at Stage 2 – Matrix 1 (Note **k**.), discusses air quality related in-combination effects. To confirm, NRW is not aware of any other relevant projects that may act in-combination with the Wylfa Newydd project during the construction phase. As advised above, we consider the operational combustion emissions may be more appropriately assessed by NRW Permitting Service as part of an Operational Combustion Installations permit application.

- *Introduction of invasive non-native species*

2.1.12. The RIES discusses the comments made by Interested Parties in relation to invasive non-native species (INNS) in Stage 2 – Matrix 1 (Note **u**.).

2.1.13. In relation to marine INNS, as highlighted in NRW's Deadline 7 submission [REP7-012], an updated Marine Works Sub-CoCP [REP5-024] was submitted at Deadline 5. Paragraph 11.4.1 of the Marine Works Sub-CoCP states that "*Horizon will produce and adhere to a Biosecurity Risk Assessment and Method Statement based on industry standards which will be approved by NRW under the Marine Licence*". NRW is satisfied that the detailed Biosecurity Risk Assessment and Method Statement could be secured as a condition of the Marine Licence. As stated in the SoCG [REP6-047], NRW and the Applicant agree that it will be up to the Secretary of State to decide whether a detailed biosecurity risk assessment should also be secured as part of the DCO.

2.1.14. In relation to terrestrial INNS, NRW provided an update on its position at Deadline 7 (section 5.1 of Annex B) [REP7-012] in response to Hearing Action Point no. 3 of the 3rd Biodiversity Issue Specific Hearing. As detailed in [REP7-012], following review of the updated CoCP [REP5-020] submitted at Deadline 5, NRW can confirm that it is satisfied that the risks of introduction and/or spread of terrestrial invasive non-native species will be appropriately managed.

- *Physical interaction between species and project infrastructure*

2.1.15. In relation to worker/visitor pressure at Cemlyn as a result of the project, the RIES refers to NRW's response to Q5.0.44 at Deadline 2 [REP2-325] which stated that there is insufficient detail in the Workforce Management Strategy to demonstrate that adverse effects will be avoided. However, NRW wish to clarify that the response provided by NRW to that question was in relation to Anglesey Terns SPA/SSSI. NRW can confirm that it does not consider that workers/visitor pressure attributed to the Wylfa Newydd project will have adverse effects on the Cemlyn Bay SAC.

2.2. Welsh Special Areas of Conservation (SACs) with Marine Mammal Features

2.2.1. As advised in its Deadline 2 submission [REP2-325], as the Appropriate Nature Conservation Body for Wales, NRW provides advice only on those sites wholly or

partly within Wales or Welsh waters. The following six SACs (with marine mammal features) are designated in Wales:

- a) Pen Llŷn a'r Sarnau / Lleyn Peninsula and the Sarnau SAC;
- b) Bae Ceredigion / Cardigan Bay SAC;
- c) Sir Benfro Forol / Pembrokeshire Marine SAC;
- d) Gogledd Môn Forol / North Anglesey Marine SAC¹,
- e) Gorllewin Cymru Forol / West Wales Marine SAC¹, and;
- f) Dynesfeydd Môr Hafren / Bristol Channel Approaches SAC¹.

2.2.2. Paragraph 4.2.8 of the RIES refers to NRW's Deadline 5 submission [REP5-081] which advised that further clarification is required, particularly with regard to underwater noise modelling. Paragraph 4.2.8 also refers to the additional information provided by the Applicant at Deadline 6 [REP6-027]. As detailed in paragraph 5.6.3 of NRW's Deadline 7 submission, following review of the information submitted by the Applicant at Deadline 6 (i.e. the new corrected modelling), NRW is now satisfied that there will be no adverse effects on marine mammal features of Welsh European sites.

2.2.3. Paragraph 4.2.4 and 4.2.5 of the RIES refers to NRW's advice at Deadline 2 and 4 that a detailed marine mammal mitigation plan, to include the vessel management plan, should be set out in a detailed Sub-CoCP to be approved by the discharging authority. However, at Deadline 5 the Applicant provided clarification in the Marine Works Sub-CoCP that the detailed mitigation measures would be produced "*in accordance with the Marine Licence to be issued by NRW*". As detailed in paragraph 5.6.5 of NRW's Deadline 7 submission [REP7-012], NRW is satisfied that it could be appropriate for the Marine Licence to secure the detailed mitigation. We also noted that it will be up to the Secretary of State to decide whether such detailed mitigation should also be secured through the DCO.

2.3. Other SACs sites in Wales

2.3.1. We note that a number of SACs are listed in Table 4.1. Based on the information submitted as part of the DCO process, NRW consider that, for other sites not discussed above and where they are wholly or partly in Wales or Welsh waters, that there will be no adverse effects on the integrity of those sites.

3. Special Protection Areas (SPA)

3.1. Morwenoliaid Ynys Môn / Anglesey Terns SPA

- *Change in visual & acoustic stimuli (Sandwich, Common and Arctic terns)*

3.1.1. Section 2.3.6 of the RIES report accurately summarises NRW's significant concerns with respect to the Anglesey Terns SPA. As detailed in NRW's Deadline 2 submission, as well as in its written submission of oral cases presented at the

¹ On 26 February 2019, the Welsh Minister for Environment, Energy and Rural Affairs formally designated these three harbour porpoise sites as Special Areas of Conservation.

January and March hearings (Deadline 4 and 7 submissions respectively), NRW advise that there is significant scientific doubt regarding whether there will be adverse effects on the Sandwich, Common and Arctic terns of the Anglesey Terns SPA. This is as a result of the combined visual and noise stimuli from the whole construction works, including the activity on land and within the marine environment.

3.1.2. Section 4.1 of the RIES refers to the conservation objectives for the European sites taken to Stage 2 that are provided in the Applicant's Shadow HRA, and those provided by NRW in response to Q5.0.45. We note that the RIES is a factual account of the information and evidence provided to the ExA, however, we consider the advice provided by NRW should be considered in the context of the conservation objectives, as referred to in NRW's Deadline 2 submission. In particular, the RIES has not considered the potential for noise and visual disturbance to result in adverse effects on the Common and Arctic tern features through a reduction in range of sites.

3.1.3. In relation to the Sandwich tern, as previously advised, it is a very sensitive species which readily deserts breeding sites. In addition, and of particular importance in view of the conservation objectives for Sandwich tern, is that the colony at Cemlyn is already showing signs of considerable stress, including:

- Significantly fewer terns returned to the colony in 2017 and 2018.
- A decrease in Sandwich tern productivity since 2007.
- Terns taking several prey items back at once to their chicks, which NRW considers is rare, if not unprecedented behaviour for this species.

3.1.4. The construction works at Wylfa Newydd pose significant risks to the conservation objectives of the Anglesey Terns SPA, as follows:

- Number of breeding pairs:* The conservation objective is a five year mean of 460 pairs of Sandwich terns. Currently, the five year mean is 2,062 reflecting very high numbers before the recent colony abandonment in 2017, and subsequent reduced numbers in 2018. Given the significant sensitivity of Sandwich terns to disturbance, there is a clear risk of the terns abandoning the colony, en masse, as a result of disturbance. This would result in a failure to meet the conservation objective.
- Range:* If the colony abandons the site, this will have a significant effect on the "range" conservation objective for the Sandwich, Common and Arctic tern features of the SPA. Currently, there are 3 sites within the SPA where Common and Arctic Terns nest (Cemlyn Bay, Ynys Feurig and the Skerries). If the Cemlyn colony was abandoned, this would be reduced to two sites.
- Productivity:* The conservation objective for the productivity of the Sandwich tern feature for the site is 0.85 chicks per pair, as a mean average, over five years. Currently, the five year mean is below this at 0.452. An increase in disturbance from the works could lead to an increase in what are known as "fly-ups" (birds flying up impulsively when disturbed). This would be of concern because when the birds are airborne, there is a greater risk that the eggs and chicks left behind will be vulnerable to predators, reducing the productivity of the colony (when the productivity is already below the conservation objective).

NRW has additional concerns about the impact on productivity now that the Applicant is proposing a 24-hour working period for substantial areas of works. Furthermore, disturbance could also result in stress, manifested as changes in hormone levels and not necessarily in a visual response, particularly if that visual response (such as taking flight) is unlikely to be appropriate for the type of disturbance. For example, taking flight might be appropriate to avoid a predator, but is of little adaptive value as a response to noise especially if this exposes eggs or chicks to predators. In such circumstances, birds may appear to tolerate noise or disturbance. However, it should not be assumed that there is no ultimate effect on body condition or breeding performance. In addition to increased construction noise stimuli at the colony, terns flying in and out of the colony during the course of their foraging trips will also be subject to a significant change to their visual environment due to the scale of construction works and associated machinery. The stress caused by these visual stimuli has the potential to act cumulatively with the effects of noise stimuli.

- 3.1.5. In the Stage 2 Matrix 2 (Item **a.** – page 87) the RIES has not provided NRW's concerns regarding mitigation in the context of the conservation objectives for range, number and productivity for Anglesey Tern SPA. NRW advise that it cannot be demonstrated that the mitigation outlined in the Main Power Station Site Sub-CoCP [REP8-049] and Marine Works Sub-CoCP [REP8-051] would be effective, and that it is possible for all three of the conservation objectives highlighted above to be undermined.
- 3.1.6. In the Stage 2 Matrix 2 (Item **a.** – page 86) there is reference to the statement that "*The Applicant does not agree that any evidence has been provided which suggests that the colony is vulnerable to the noise and visual disturbance associated with the Proposed Development*". As stated in previous written submissions, NRW acknowledge that the academic literature available does not provide directly comparable information that deals with the construction-related disturbance effects on the tern species. However, NRW's clear advice is that it cannot be demonstrated, beyond reasonable scientific doubt, that the colony will not abandon the site or that the works will not lead to an increase in fly ups, leading to a decrease in productivity due to cooling of eggs or predation.
- 3.1.7. NRW's role in this process is to advise on the correct legal approach. The legal test which has been articulated repeatedly by the European Court of Justice is that there should be no reasonable scientific doubt about the absence of adverse effects on the European protected site, applying the precautionary principle. NRW's clear advice is that there is reasonable scientific doubt, in this case, regarding the absence of adverse effects on the integrity of the SPA. For the reasons given in written submissions, NRW consider that a conclusion of no adverse effects on site integrity of the Anglesey Terns SPA cannot be reached.

- *Alteration of coastal processes & dynamics*

- 3.1.8. Stage 2 Matrix 2 (Item **k.**) refers to NRW's concerns in relation to coastal processes and possible effects on Esgair Gemlyn shingle ridge, which supports

the functioning of Cemlyn Lagoon and the tern breeding islands contained therein. However, as explained in paragraphs 2.1.1 – 2.1.3 above, NRW can confirm that it now considers, in view of the commitments identified in the Marine Works Sub-CoCP, that the marine works will not have adverse effects on Esgair Gemlyn.

- *Supporting habitat / Tern foraging & fish (as prey items)*

3.1.9. The Stage 2 Matrix 2 table refers to a number of impact pathways. As detailed in NRW's Deadline 2 submission [REP2-325], we consider that effects on supporting habitat or fish (as prey items) are unlikely to have adverse effects on the Anglesey Terns SPA.

3.2. **Aber Dyfrdwy / Dee Estuary SPA**

3.2.1. We note that Stage 2 Matrix 3 in the REIS has accurately reflected NRW's concerns in relation to the Dee Estuary SPA. NRW advise that some sandwich terns that breed at Cemlyn may also form part of the passage Sandwich tern feature of this SPA and therefore an adverse effect on site integrity cannot be ruled out, given its concerns about adverse effects on the integrity of the Anglesey Terns SPA.

3.3. **Other SPAs and Ramsar sites in Wales**

3.3.1. For the SPAs and Ramsar sites not discussed above, and based on the information submitted as part of the DCO process, NRW agree with the conclusions of the Shadow HRA that the Wylfa Newydd project will not result in adverse effects on site integrity. Please note this advice is based on sites in Wales, or partly in Wales.

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ANNEX B – NRW’S UPDATE ON, AND FURTHER ADVICE WHERE APPROPRIATE, ON ACTIONS LISTED IN NRW’S DEADLINE 7 SUBMISSION

1. Introduction

1.1.1. In its Deadline 7 submission [REP7-012], NRW provided advice on a number of outstanding actions in Annex B. These were actions that needed to be addressed prior to the end of the Examination in order to address NRW’s concerns. NRW provide an update below on those actions where it is considered helpful to the Examining Authority.

2. WYLFA NEWYDD DEVELOPMENT AREA ISH (4 March)

2.1. Protected Landscape – design principles (Hearing Action Points 18, 25 and 47)

2.1.1. In section 2.1 (Annex B) of its Deadline 7 submission [REP7-012], NRW proposed text for inclusion in the design principles of the Design and Access Statement. This was to ensure that the AONB is fully considered in the subsequent detailed design and to mitigate the effects of the development as far as is practicable.

2.1.2. NRW has reviewed the updated design principles of the Design and Access Statement (Volume 2) submitted at Deadline 8 [REP8-044] and can confirm that NRW’s concerns have been appropriately addressed.

2.2. Tre'r Gôf and Cae Gwyn SSSIs – monitoring and mitigation (Hearing Action Points 40 and 43)

2.2.1. As detailed in section 2.4 (Annex A) of NRW’s Deadline 7 submission [REP7-012], NRW advise that a robust monitoring and mitigation scheme must be approved by the discharging authority, in consultation with NRW, prior to the relevant activities taking place. This should be secured through a Requirement within the draft DCO.

2.2.2. As detailed in section 2.2 in Annex B of [REP7-012], the Applicant provided draft wording for the DCO Requirement for NRW’s review. NRW responded to the Applicant with proposed amendments. NRW notes that these amendments were not reflected in the draft DCO submitted at Deadline 8, however, the Applicant has since informed NRW that the amendments had mistakenly not been included in the updated draft DCO. The Applicant has confirmed that NRW’s amendments will be included in an updated draft DCO submitted at Deadline 9. The Applicant has highlighted that the amendments that it proposes were included on page 31 of the *Summary Table of Amendments to the DCO* document [REP8-010].

2.2.3. Based on the DCO Requirement as drafted in [REP8-010], NRW advise that the following amendments (in red below) are also incorporated into the submission at Deadline 9. The amendments below have been shared with the Applicant by email

on 3/4/2019, and confirmation was received from the Applicant that the amendments will be incorporated by the Applicant.

WNDA	Tre'r Gof SSSI and Cae Gwyn Hydro-ecological Monitoring and Mitigation Scheme	The scheme will be prepared in line with the principles set out in Sections 10 and 11 of the Main Power Station Site sub-CoCP and will include details of— <ul style="list-style-type: none">a) A hydrogeological and hydrological conceptual model(s);b) Continuous water level monitoring, locations and frequencies informed by the conceptual model in (a);c) A Triggers for identifying changes in groundwater levels which would be likely to affect (any of the flora, fauna or geological or physiographic features of) Tre'r Gof SSSI and Cae Gwyn SSSI;d) Mitigation measures implemented pursuant to (c), to minimise likelihood of damage to (any of the flora, fauna or geological or physiographic features of) Tre'r Gof SSSI and Cae Gwyn SSSI.	NRW
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2.2.4. We also note that the *Summary of Amendments to the DCO* [REP8-010] (page 31), as well as providing the proposed scheme above, also includes an additional scheme for Cae Gwyn which relates to monitoring only. NRW assume this is included in error as monitoring and mitigation for Cae Gwyn is already provided for in the scheme above (note the amendment to the scheme heading in the 2nd column above to be consistent with the detail in the 3rd column). For the avoidance of doubt, and as highlighted in paragraph 7.15.5 of NRW's Deadline 2 submission, implementation of mitigation will be required in the event that monitoring indicates a likelihood of damage to Cae Gwyn SSSI. On the basis of the inclusion of the scheme above in 2.2.3, we'd therefore advise that the separate scheme relating to 'Cae Gwyn SSSI Hydroecological Monitoring Scheme' included in [REP8-010] be removed to avoid duplication or ambiguity.

3. 3rd DRAFT DCO ISH (6 March)

3.1. Draft DCO – NRW Permitting Service comments

3.1.1. In NRW's Deadline 5 submission [REP5-081], NRW Permitting Service highlighted amendments it would seek to the DCO, which focus on ensuring clarity regarding the discharging authority roles, requirements that are considered relevant to the marine works, and procedural matters arising from Schedule 19. In response to NRW's Deadline 5 submission on these matters, the Applicant's Deadline 6 cover letter [REP6-001] stated that it will "revert to NRW shortly". At Deadline 8 the Applicant has updated the draft DCO and provided its responses to the comments made by NRW at Deadline 5.

3.1.2. We note the amendments to the DCO (Revision 5) [REP8-029] have not taken account of the IACC, NRW and Welsh Government Joint Position Paper,

submitted by IACC at Deadline 7 that stated that IACC will give up its planning role in the intertidal area and that NRW will be the sole discharging authority seaward of mean high water springs (MHWS). This would be *inter alia* upon the basis that where any work includes both landward and intertidal elements or in any other way extends across MHWS, discharge of the related requirements is required from **both** IACC (for sections or areas landward of MHWS), NRW (for sections or areas seaward of MHWS), and there should be added to the DCO an explicit provision that prohibits the undertaker carrying out or commencing any part of any such works until both authorities have issued approvals. A copy of this position statement is reproduced at Annex D to this submission. NRW understands that the Applicant was provided with a copy of this position statement prior to its deadline 7 submission.

3.1.3. NRW makes the following specific comments in respect of the DCO provisions (see further comments in 3.1.4 to 3.1.17 below).

- *Definition of 'Discharging Authority'*

3.1.4. The definition of “discharging authority” needs to be amended to clarify, that for works that cross the mean high water springs boundary, both NRW and IACC are a discharging authority. We suggest that the definition should be as follows (in red below):

“means either or both IACC and NRW, where IACC’s approval is required in respect of any Requirements in Schedule 3(Requirements) of this Order relating to land above the MHWS, and NRW’s approval is required in respect of any Requirements relating to land seaward of the MHWS”

- *Schedule 3 – Requirements*

3.1.5. NRW considers that in addition to the requirements for which NRW is identified as the discharging authority, within revision 5 of the draft DCO [REP8-029], namely PW4, WN24, WN25, and WN28, as stated within NRW’s Deadline 5 submission, NRW consider it should be a discharging authority for two additional requirements. Firstly, we consider that NRW should be discharging authority for requirement PW2 given that the phasing of the MOLF is in respect of works that cross the MHWS boundary (in addition to IACC). Secondly, NRW should be a discharging authority in respect of PW3 given that the Method Statement would also control the works that are seaward of Mean High Water Springs (in addition to IACC). If NRW’s definition of ‘discharging authority’ as suggested above is accepted, we would advise that reference to ‘discharging authority’ is made in Requirements PW2 and PW3, to reflect NRW’s involvement. If the definition is not accepted, then specific reference should be made to NRW’s approval being required.

- *Schedule 3 - definition of ‘marine works consultee’*

3.1.6. We understand that the applicant has inserted the definition of “marine works consultee” to address the issue of consultation between IACC and NRW as stated

in the position paper referred to above. The current drafting provides a lack of clarity. NRW is concerned that the provisions of the DCO as they are currently drafted does not ensure that IACC and NRW are properly consulted where both NRW and IACC are the discharging authority. NRW considers that the ‘marine works consultee’ definition could be amended as follows (in red below) to address this:

“means either or both IACC and NRW where IACC should be consulted in respect of any Marine Work Requirements relating to land seaward of the MHWS and NRW should be consulted in respect of works relating to land above the MHWS”.

- *Schedule 19 Paragraph 1(1)*

- 3.1.7. As stated in our Deadline 5 submission we consider that the timescale for discharging requirements or requesting further information to be challenging and consider that requirement WN24 should be defined as a ‘major requirement’.
- 3.1.8. We would recommend that the associated time periods outlined in Schedule 19 Paragraph 1(1) are increased to 84 days from receipt of an application or further information associated with a major requirement and 56 days receipt of an application or further information associated for a minor requirement. This is considered important and necessary to allow appropriate time for NRW to properly determine request for approval.
- 3.1.9. We note that the 8-week timescale was approved for other DCOs in Wales, for example The Port Talbot Steelworks Generating Station Order 2015, The Hirwaun Generating Station Order 2015, The Wrexham Gas Fired Generating Station Order 2017 and The Glyn Rhonwy Pumped Storage Generating Station Order 2017 and that this should apply to a ‘minor detailed requirements’ here. We consider that more time is required for major detailed requirement, by virtue of their complex nature, and propose that 12 weeks (84 days) is appropriate.

- *Schedule 19 Paragraph 1(4)*

- 3.1.10. The Applicant has proposed the following: *“Where an application is made in relation to a Work that has more than one discharging authority, the discharge of those applications will be managed in accordance with a memorandum of understanding agreed between the undertaker, IACC and NRW.”*
- 3.1.11. We object to the inclusion of this clause. The position paper referred to and explained above sets out the proposed arrangements between IACC and NRW. It is intended that IACC will give up its planning role in the intertidal area and NRW will be the sole discharging authority seaward of MHWS, with one of the respective bodies being specified as a required consultee where the other is the discharging authority.
- 3.1.12. Where any work includes both landward and intertidal elements or in any way extends across MHWS, discharge of the related requirements is required from

both IACC for sections or areas landward of MHWS and NRW for sections or areas seaward of MHWS and there should be explicit provision that prohibits the undertaker from carrying out or commencing any part of any such works until both authorities have issued approvals. To support this arrangement, there will be a memorandum of understanding setting out the working arrangements between NRW and IACC.

3.1.13. The proposed wording in paragraph 1(4) of the draft DCO does not reflect this arrangement. In any event, NRW does not consider the proposals under para 1(4), namely for the identity of the discharging authority and approach to coordination to be governed by reference to an MOU within the DCO to be appropriate or lawful. The identity of the discharging authority can and should be clearly delineated in the DCO (as proposed above). The MOU is a free-standing arrangement between IACC and NRW.

- *Schedule 19 Paragraph 2*

3.1.14. For requirements that require consultation with statutory bodies where further information is requested, NRW considers that a time period of 28 days following the receipt of the application is required to enable adequate time for consultation comments to have been received and appropriately considered. Further, for those requirements that specify a 'required consultee', we would recommend that a statement is included that "*the undertaker must at the same time as making the application to the discharging authority, send the copy to the Required consultee*". This will ensure that the consultee is provided with prior notification of the consultation.

3.1.15. NRW has concerns in respect of the proposed wording of Paragraph 2 of Schedule 19. There is ambiguity as to what is intended particularly in relation to paragraph 2(3). NRW would refer the Examining Authority to paragraph 2 and paragraph 3 of Schedule 7 of The Glyn Rhonwy Pumped Storage Generating Station Order 2017, which deals with further information. In particular, NRW refers to paragraph 2(3) and paragraph (3), which NRW considers should be adopted for the Wylfa Newydd DCO. The text is reproduced below for ease of reference:

Further information

2.—(1) Where an application has been made under paragraph 1, the relevant planning authority has the right to request such reasonable further information from the Undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 3 business days of receipt of the application, notify the Undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the relevant planning authority must issue the consultation to the requirement

consultee within 5 business days of receipt of the application. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required within 15 business days of receipt of the consultation. The relevant planning authority must notify the Undertaker in writing specifying any further information requested by the consultee within 3 business days of receipt of such a request. In the event the consultee does not require any further information, then they must respond to the consultation within 20 business days from receipt of the consultation notification from the relevant planning authority.

Provision of information by Consultees

3.—(1) Subject to subparagraph (2), any consultee who receives a consultation under paragraph 2(3) must respond to that request within 28 days from receipt in order for their response to be considered.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 2(3) then they must respond to the consultation within 28 days from the receipt of the further information requested for their response to be considered.

3.1.16. We consider that the time period outlined within paragraph 2(3) of 1 business day time period to notify consultees and the undertaker to be unreasonable and potentially unworkable.

- *Schedule 19 Paragraph 3 (Hearing Action Point 11)*

3.1.17. We welcome the inclusion of paragraph 3 within Schedule 19 to ensure the appropriate cost recovery for any work NRW undertakes as discharging authority under the DCO.

3.2. Section 106 (Hearing Action Point 35)

- *AONB Fund*

3.2.1. Hearing Action Point 35 states “*PHN from NRW to provide an update on S106 with particular reference to any substantive matters that remain outstanding; a timeline for when these may be resolved and alternative solutions/suggestions for how any outstanding substantive matters could be dealt with if they were not included in the completed S106*”.

3.2.2. As detailed in paragraph 2.1.11 (Annex A) of NRW’s Deadline 7 submission [REP7-012], NRW advised that an AONB project fund must be included within the section 106 agreement to enable offsite mitigation of the residual long term visual impacts of the WNDA development. The Applicant has shared a draft and updated section 106 agreement with NRW which we consider addresses NRW’s concerns. NRW can confirm its advice following submission of the final section 106 by the Applicant at Deadline 9.

- *SPA Compensation*

3.2.3. As stated in paragraph 5.1.12 (Annex A) of NRW's Deadline 7 submission [REP7-012], the Applicant has shared a draft DCO Requirement as an alternative securing mechanism to the section 106. NRW has been advising the Applicant in developing an appropriate securing mechanism. We note that the Applicant intends to submit the draft DCO Requirement and a 'Tern Compensation Strategy' at Deadline 9. NRW will confirm at Deadline 10 whether we consider the securing mechanism to be acceptable.

4. OFFSITE DEVELOPMENTS ISH (7 March)

4.1. Protected Species (Hearing Action Points no. 5, 9 and 17)

- *Ecological Compliance Audit*

4.1.1. In section 4.2.1 (Annex B) of its Deadline 7 submission [REP7-012], NRW advised that the CoCP includes a commitment to undertake an Ecological Compliance Audit that will be shared with the discharging authority and NRW. NRW provided text that it considered appropriate for inclusion in the CoCP however, NRW is disappointed to note at Deadline 8 (Item 9, Table 1-4 of [REP8-011]) that the Applicant does not propose to include this commitment.

4.1.2. The purpose of Ecological Compliance Audit is to assess whether mitigation measures for protected species have been implemented in accordance with the control documents (i.e. CoCP and Sub-CoCPs). There is a clear and interdependent relationship between compliance audits and mitigation; both are regarded as necessary for a complete and acceptable scheme. There are a number of reasons why compliance audit is required. These include being able to:

- a) Demonstrate compliant delivery of DCO Requirements and/or control documents where relevant to protected species;
- b) Demonstrate compliant delivery of method statements and, if required, subsequent amendments;
- c) Ensure the appropriate implementation of avoidance and mitigation measures;
- d) Demonstrate to regulatory organisations(s) (e.g. during inspections) that specific legal requirements are being addressed, particularly in respect of compliance with the CoCP and Sub-CoCPs.

4.1.3. NRW therefore reiterates its advice that the following commitment (outlined in red below) is included in the CoCP:

Ecological Compliance Audits will be undertaken at six-month intervals, or other times agreed by the LPA, by an independent ecologist to demonstrate that ecological mitigation or compensation has been implemented in accordance with the CoCP/Sub-CoCP and with the relevant legislation. Audit reports will be shared with IACC and NRW within 2 weeks of assessment.

- *Dalar Hir Park and Ride – Great crested newts (GCN)*

4.1.4. In paragraph 4.2.2 (Annex B) of its Deadline 7 submission [REP7-012], NRW advised that newt grids are installed across access points to the Dalar Hir site which will collect newts that attempt to enter the site.

4.1.5. Item 5 in Table 1-4 of *Horizon's Deadline 8 Responses to Actions set in ISH on 4-8 March* [REP8-011] states that Appendix 1-6 of [REP8-011] provides the Applicant's response to the text proposed by NRW. However, no response is provided in Appendix 1-6 on this matter.

4.1.6. However, we note the Applicant has provided its position in the SoCG between the Applicant and NRW submitted at Deadline 8, and that it does not propose to include the commitments identified above (paragraph 4.1.2) in the Sub-CoCP.

4.1.7. The Applicant considers that the likelihood of GCNs accessing the Dalar Hir site is negligible, based on baseline survey and that they consider the A5 to be a significant barrier to GCNs. NRW disagree for the following reasons:

- a. There are great crested newts within the ponds located between the A5 and A55, which are across the road from the Dalar Hir site.
- b. NRW agree that the two walls either side of the A5 will function as a partial barrier, however, it is not a complete barrier. Vegetation and drainage features on the boundary wall may provide a pathway.
- c. There are also existing gaps in the walls where gates are located which provide a pathway.
- d. Amphibians are often found in both working and dormant quarries. Smaller newts, including young GCNs are known to be able to climb vertical surfaces. Given no overhang, whilst the walls constitute a form of barrier, NRW does not consider that it will function as a complete barrier.
- e. The construction of the Dalar Hir site will open up gaps in the northern boundary wall.

4.1.8. NRW reiterates its advice that a grid should be erected across the entrances to the Dalar Hir site as a precautionary measure during construction of the Park and Ride facility. We therefore repeat our advice that the following commitment (provided in red below) should be included in the Dalar Hir Sub-CoCP prior to the end of the Examination:

The works will include the installation of newt grids across access points into the working area of Dalar Hir to ensure the prevention of incidental injury or killing of any GCN during the construction phase of the proposal. [This ensures compliance with Article 15 of the Habitats Directive in respect of the prevention of incidental killing/injury of Annex IV species].

4.2. Ecological Compensation Sites (Hearing Action Points no. 26, 27 and 28)

- *Fen creation*

- 4.2.1. In paragraph 4.3.1 (Annex B) of its Deadline 7 submission [REP7-012], NRW proposed amendments to Chapter 4 of the Landscape and Habitat Management Strategy (LHMS) in order to enable a robust adaptive management approach with regard to fen creation. NRW can confirm that it is satisfied that the LHMS submitted at Deadline 8 [REP8-063] has appropriately addressed NRW's proposed amendments with regard to fen creation.
- 4.2.2. NRW can also confirm that proposed amendments to draft DCO Requirements ECS2 and ECS4 (as specified in paragraphs 4.3.2 and 4.3.3 (Annex B) of NRW's Deadline 7 submission [REP7-012]) have been appropriately addressed in the draft DCO submitted at Deadline 8 [REP8-029].

- *Flood Risk*

- 4.2.3. In paragraph 4.3.4 (Annex B) of its Deadline 7 submission [REP7-012], NRW proposed additional text for inclusion in the LHMS to secure a backwater analysis to consider flood risk impacts. The text proposed by NRW (repeated below) has been included however, the Applicant has also included the term 'significant' (highlighted in red for ease of reference). TAN15 requires that there is "*no flood risk elsewhere*". The wording below may not therefore be compliant with TAN15. We advise that the term 'significant' be removed, or a definition be provided of what would constitute a "*significant increase*". TAN15 advises the impact of works in terms of flood risk on neighbouring properties and elsewhere on the floodplain needs to be assessed up to the 0.1% probability event. It would need to be demonstrated that works do not cause flooding elsewhere.
 - *Drainage modifications will be informed by a suitable analysis (backwater assessment impacts or similar) which will consider the flood risk impacts to 3rd parties from the works. The detailed drainage design should demonstrate no significant increase in flood risks to 3rd parties due to the compensation site works*

[CONTINUED]

ANNEX C – NRW'S RESPONSES TO THE EXAMINING AUTHORITY'S THIRD ROUND OF WRITTEN QUESTIONS (ISSUED ON 3/4/2019)

Please find below NRW's responses (right hand column) to the Examining Authority's (ExA) third round of written questions:

Reference	Respondent	Deadline for Response	Question	NRW Response
R17.1 Biodiversity				
R17.1.1	NRW	D9	Is NRW content that monitoring and mitigation schemes for Tre'r Gôf and Cae Gwyn SSSIs are now secured in the dDCO [REP8 – 029]	We refer the ExA to section 2.2 of Annex B of this letter. The Applicant intends to include the amendments proposed by NRW in the updated draft DCO to be submitted at Deadline 9. Subject to review of the updated draft DCO and confirmation that NRW's amendments have been incorporated (which NRW will provide at Deadline 10), we consider the monitoring and mitigation schemes for Tre'r Gôf and Cae Gwyn SSSIs should be appropriately secured.
R17.1.2	NRW	D9	Is NRW content that Section 7.6 of [REP8-049] provides clarity on how dust will be monitored in real-time on site and how appropriate management, where needed, will be initiated to manage dust exceedances? If not, what changes would it suggest?	NRW requested additional clarification from the Applicant on the dust monitoring proposals (paragraph 2.2 (Annex A) of Deadline 7 [REP7-012]). On 20/3/2019, NRW had a telecon with the Applicant which provided clarification and addressed NRW's concerns. This is reflected in the final agreed SoCG [REP8-018]. NRW can therefore confirm that, in view of the mitigation provided in the CoCP [REP8-047] and Main Power Station Site Sub-CoCP [REP8-049] submitted at Deadline 8, that construction generated dust will be appropriately managed and will not have adverse effects on protected sites.

R17.2 Development Consent Order

R17.2.0	IACC WG NRW	D9	DO IPs wish to respond to the matters raised in REP8-004 DCO Outstanding issues Register	<p>Drainage within Tre'r Gôf In relation to the section on <i>Drainage within Tre'r Gôf</i> (section 1.3.43 – 1.3.46) within [REP8-0004], and as stated in paragraph 2.4.2 (Annex A) of NRW's Deadline 7 submission [REP7-012], NRW notes that there are Requirements (WN1, WN9 and WN11) that will secure detailed designs for the drainage schemes.</p> <p>In relation to the monitoring and mitigation scheme for Tre'r Gôf, we note that 1.3.46 of [REP8-004] states that it is awaiting comment from NRW. These comments were provided to the Applicant in advance of Deadline 8 (and are reflected in the <i>Summary of Amendments to the DCO</i> [REP8-010]) however the Applicant has informed NRW that they were not included in the draft DCO [REP8-029] in error. As explained in section 2.2 [Annex B] of this letter, NRW will confirm its position on the monitoring and mitigation scheme following review of the updated draft DCO to be submitted by the Applicant at Deadline 9.</p> <p>Potential new tern compensation requirement As detailed in paragraph 1.3.71 of [REP8-004], the Applicant is proposing to submit an updated draft DCO at Deadline 9 that will include an additional DCO Requirement with respect to compensation. NRW will provide its advice on whether we consider the Requirement to be acceptable at Deadline 10.</p> <p>NRW's role as a discharging authority NRW Permitting Service has responded to matters raised in [REP8-004] in this Deadline 9 submission. To assist the Examining Authority the relevant paragraph numbers are detailed below:</p>
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				<p>For advice in relation to “discharging authority,” please refer to paragraphs 3.1.2 and 3.1.4.</p> <p>For advice in relation to DCO Requirements PW2 Phasing Strategy and PW3 Construction Method Statement, please refer to paragraph 3.1.5</p> <p>Timeframes: Please refer to paragraph 3.1.7-3.1.9 and 3.1.14-3.1.16.</p>
R17.2.2	NRW	D9	Can NRW confirm that it is now content that there is clarity in the draft DCO regarding the discharging authority roles, requirements that it considers relevant to the marine works, and procedural matters arising from Schedule 19, as requested in [REP7-012, 3.1.2].	<p>Regarding the discharging authority role, we refer you to paragraph 3.1.4 (Annex B) of this Deadline 9 response. In summary, we consider that the definition should identify that there may be circumstances in which NRW and IACC are both acting as discharging authority.</p> <p>Regarding procedural matters arising from Schedule 19, we refer you to section 3.1.7 – 3.1.17. In summary, we welcome the inclusion of Schedule 19 Paragraph 3 regarding fees however, we object to the inclusion of the new clause 1(4) and recommend extended time periods for discharge of requirements and Further Information.</p>
R17.2.6	Applicant IACC NRW	D9	<p>Article 2 - Interpretation</p> <p>(c) What is the process by which the Applicant is to be consulted on the contents of a Memorandum of Understanding between the parties in respect of the arrangements for the ‘discharging authority’? [REP8-004] DCO Outstanding Issues Register]</p>	Notwithstanding our objection to the inclusion of clause 1 (4) to Schedule 19, as outlined in section 3.1.10 – 3.1.13 of our deadline 9 response, we consider that the Memorandum of Understanding will be an agreement between NRW, IACC and if necessary, Welsh Government. We do not consider that the Applicant would be a party within the Memorandum of Understanding and do not consider it appropriate for a timescale or mechanism for obtaining agreement to be

			(d) Should there be an agreed timescale/mechanism for obtaining agreement?	identified.
R17.2.7	Applicant IACC NRW	D9	<p>Article 2 - Interpretation / Schedule 19</p> <p>A new clause has been added by the Applicant to Schedule 19:</p> <p><i>(4) Where an application is made in relation to a Work that has more than one discharging authority, the discharge of those applications will be managed in accordance with a memorandum of understanding agreed between the undertaker, IACC and NRW. [REP8-004 DCO Outstanding issues Register]</i></p> <p>If agreement cannot be reached between the parties, should provision be made for an arbitration mechanism to take effect?</p>	<p>We have interpreted this question to be regarding the inclusion of an Arbitration Clause, in the instance that the discharging authorities do not agree with the discharging of a requirement.</p> <p>Notwithstanding our objection to the inclusion of clause 4 to Schedule 19, as outlined in section 3.1.10 – 3.1.13 of our deadline 9 response, we do not consider it appropriate to include an arbitration mechanism. We would have serious concerns regarding the referral of regulatory decisions to an independent arbitration process. In any event, the appeal mechanisms with the Development Consent Order, or Judicial Review should provide recourse to the Applicant.</p>
R17.2.11	Applicant IACC WG NRW	D9	<p>Article 9 – Consent to transfer the benefit of the Order An amendment to Article 9 is proposed by the Applicant:</p> <p><i>(4) Unless otherwise approved by the Secretary of State, the transferee approved under paragraph (1) is required to put in place at the time of</i></p>	NRW has no comments to make with respect to this question.

			<p><i>the transfer an equivalent guarantee or alternative form of security to that in place at the time of the transfer under article 83 of this Order.</i></p> <p>(a) What would prevent the 'alternative' being less robust than the 'equivalent form of security'?</p> <p>(b) Who would decide whether an 'alternative' form was satisfactory?</p> <p>(c) What is to stop the 'alternative' being less robust?</p> <p>(d) There appears to be no limitations on what an alternative could be. Who would decide whether the alternative is satisfactory?</p> <p>(e) Would the drafting set out below provide greater clarity?</p> <p>9. [...] (4) Unless otherwise approved by the Secretary of State, the transferee approved under paragraph (1) is required to put in place at the time of the transfer a guarantee or form of security equivalent to that in place at the time of the transfer under Article 83 of this Order.</p>	
R17.2.20	IACC NRW WG	D9	<p>Schedule 3 – Requirements</p> <p>In response to discussions, a number of changes have been made to the requirements in the dDCO at Deadline 8. [REP8-010-Summary table of amendments to the DCO]</p>	<p>NRW is content with the drafting except for the following areas:</p> <ol style="list-style-type: none"> 1. Tre'r Gôf and Cae Gwyn Hydroecological Monitoring and Mitigation Scheme – as explained in section 2.2 (Annex B) of this letter, NRW will review the updated

			<p>(d) Are parties' content with the drafting as set out at Deadline 8?</p> <p>(e) If not, provide an explanation of why not.</p> <p>(f) If appropriate, provide an alternative form of words for consideration, or signpost where previous drafting has been provided.</p>	<p>draft DCO to be submitted at Deadline 9.</p> <ol style="list-style-type: none"> 2. Tern compensation – as explained in response to R17.2.0, NRW will review the updated draft DCO to be submitted at Deadline 9. 3. NRW Permitting Service have no additional comments that have not already been highlighted in our responses to R17.2.7, R17.2.6, R17.2.2, R17.2.0
R17.2 Habitats Regulations Assessment				
R17.3.1	NRW	D9	<p>NRW in its SoCG with the Applicant [REP6-047, NRW130] advises that an adverse effect on site integrity for the Passage Sandwich Tern feature of the Dee Estuary SPA cannot be ruled out. However, at NRW68 and NRW79 NRW states that the proposed Off-Site Power Station Facilities is unlikely to adversely affect any SAC, SPA or Ramsar site in Wales. Do NRW's concerns about the integrity of the Dee Estuary SPA also apply to the Dee Estuary Ramsar site? If not, why not?</p>	<p>NRW advises that the Offsite Power Station Facilities will not have adverse effects on protected sites.</p> <p>NRW has previously advised that it is not possible to rule out an adverse effects on the integrity of the Dee Estuary SPA (section 7.9.1 of NRW's Deadline 2 submission [REP2-325]). NRW does not consider that the Sandwich tern passage feature forms part of the designated features of The Dee Estuary Ramsar site. NRW therefore advise that there will be no adverse effects on the integrity of The Dee Estuary Ramsar site.</p>
R17.3.2	NRW	D9	<p>Is NRW content with the Applicant's revised mitigation zone for Minke whale of 800m from construction activity, as described in the draft MMMP supplied to NRW as part of the</p>	<p>As detailed in section 5.5 (Annex B) of NRW's Deadline 7 submission [REP7-012], based on the updated modelling information, the noise modelling for rock breaking identified a larger zone of hearing injury (Permanent Threshold Shift) for low frequency cetaceans (i.e. Minke Whale) at 790m. This</p>

			Marine Licence Request for Information?	would require modification to the mitigation to reduce injury risk to this European Protected Species, for example the widening of the mitigation zones from 500m to 1km for this species. NRW maintains its advice that 1km, rather than 800m, would be an appropriate mitigation zone. As detailed in section 5.5 of [REP7-012], NRW consider it appropriate for the marine mammal mitigation plan to be secured as part of a Marine Licence.
R17.3.3	NRW	D9	The Applicant has provided material [REP8-043] to be considered under Article 4(7) in respect of benthic invertebrates in relation to the Skerries. Is NRW content, if not what additional information is required?	As detailed in paragraph 2.1.5 of NRW's Deadline 8 submission [REP8-080], as the Appropriate Agency for the purposes of the Water Framework Directive, NRW will advise the Examining Authority on matters relating to Article 4(7) of the Directive. In addition to providing comments on the information submitted by the Applicant, NRW will advise the Examining Authority as to whether the requirements of Article 4(7) have been met. This advice, which will include its advice on benthic invertebrates, will be in the form of a brief report which we intend to submit at Deadline 10.
R17.3.4	NRW	D9	Do NRW have remaining concerns about mitigation to deal with potential impacts on Ynys Môn secondary groundwater body, in the light of the Applicant's revised Schedule 21, Part 2 of the dDCO [REP8029]?	As explained in response to R17.1.1, NRW will review the updated draft DCO submitted by the Applicant at Deadline 9 and provide confirmation at Deadline 10 that NRW's amendments on the monitoring and mitigation schemes for Tre'r Gôf SSSI have been incorporated. Also, as advised above for R17.3.3, NRW will advise the Examining Authority at Deadline 10 as to whether the requirements of Article 4(7) have been met, including with respect to the Ynys Môn Secondary groundwater body.

ANNEX D

Wylfa Newydd DCO - Co-ordinated Working in the Intertidal Area – A Joint Position Paper by the IACC, NRW and Welsh Government.

Following the issue specific hearings on the Wylfa Newydd DCO in January 2019, the Isle of Anglesey County Council (IACC), Natural Resources Wales (NRW) and Welsh Government (WG) were asked if they could discuss and preferably agree who should be the discharging authority for the intertidal area.

The Panel also asked IACC, NRW and WG to clarify how IACC and NRW would co-ordinate their different responsibilities in that area. This paper sets out the agreed position of the parties on those matters.

The issue arose because IACC was not content to surrender its discharging responsibility as local planning authority for the land between mean high water springs (MHWS) and mean low water (MLW) known as the intertidal area. IACC considered that the substantial nature of the works in the intertidal area, and their extensive physical integration with works which are also located landward of MHWS could have significant landscape and visual impacts. Such impacts are controlled through the planning regime,

However, NRW notes that works constructed seaward of MHWS would be controlled through the marine licensing regime, in addition to the planning regime. Irrespective of the DCO, NRW would be the relevant Licensing Authority (on behalf of the Welsh Ministers) for the Marine Licence for works seaward of MHWS. As a result, NRW is likely to be dealing with applications to discharge Marine Licence conditions that give rise to the same or similar issues that would arise when the DCO requirements are sought to be discharged. Removing NRW's responsibility in the intertidal area for the purposes of the DCO would be unacceptable in light of this.

The parties agree that there is a legitimate planning authority interest in the intertidal area and at the same time a legitimate marine licensing authority interest. Given the overlap, consideration was given to having joint discharging authorities however it was determined that was likely to be unworkable in practice.

In order to resolve this issue during the Wylfa Newydd Examination, the parties have agreed that IACC will give up its planning role in the intertidal area and NRW will be the sole discharging authority seaward of MHWS subject to the following:

- 1 IACC are to be prescribed in the DCO as a required consultee on any and all applications to discharge DCO requirements which include any element of Works in the inter-tidal area.
- 2 NRW are to be prescribed in the DCO as a required consultee on any and all applications to discharge the landward elements of requirements which extend over MHWS. This is in addition to any other consultation requirement.

- 3 Where any work includes both landward and intertidal elements or in any other way extends across MHWS, discharge of the related requirements is required from both IACC (for sections or areas landward of MHWS), NRW (for sections or areas seaward of MHWS), and there should be added to the DCO an explicit provision that prohibits the undertaker carrying out or commencing any part of any such works until both authorities have issued approvals.
- 4 The WG and IACC consider that Welsh Ministers should be the appeal body for any refusal under a requirement.

IACC and NRW will conclude a memorandum of understanding governing how their relationship on applications for the inter-tidal area or works which extend over MHWS will operate in practice in order that there is certainty as to how the respective interests will be protected.

For completeness, it is noted that, under the DCO, there is no enforcement authority for the works seaward of MHWS. For the Marine Licence regime, the Marine Enforcement Authority function is undertaken by the Welsh Ministers, not NRW.

----- END -----