



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

17 Ebrill / April 2019

Dear Sir/Madam,

DEADLINE 10 SUBMISSION

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

RE: NATURAL RESOURCES WALES' DEADLINE 10 SUBMISSION

This letter comprises the following submission from Natural Resources Wales (NRW):

- i. NRW's advice in relation to Horizon's Tern Compensation Proposal – see [Annex A](#);
- ii. NRW's response to the Applicant's comments on the Report on the Implications for European Sites (RIES) – see [Annex B](#);
- iii. NRW's advice on the requirements of Article 4(7) – see [Annex C](#);
- iv. NRW's update on, and further advice where appropriate, on outstanding issues – 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 provided in section 2.1 of Annex D) 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

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ANNEX A – NRW’S ADVICE IN RELATION TO HORIZON’S TERN COMPENSATION PROPOSAL

1. Introduction

- 1.1.1. The Applicant has submitted the document titled Horizon’s Tern Compensation Proposal [REP9-028] at Deadline 9. This includes the DCO Requirement proposed for inclusion in the final draft DCO at Deadline 10 and also the Tern Compensation Strategy. We note that the Tern Compensation Strategy has been included in the updated Main Power Station Site Sub-CoCP [REP9-011] and Marine Works Sub-CoCP [REP9-013]. NRW has provided informal advice to the Applicant (email dated 29/3/2019) however not all NRW’s concerns have been addressed; the outstanding concerns are discussed below.
- 1.1.2. As detailed in its Deadline 7 submission [REP7-012], NRW committed to confirm at Deadline 9 whether it considered the DCO Requirement drafted by the Applicant provided an appropriate securing mechanism should the Secretary of State be unable to rule out an adverse effect in relation to the Anglesey Terns SPA. As highlighted in previous submissions, NRW continues to advise that there is significant scientific doubt and that it is not possible to rule out adverse effects on the Sandwich, Common and Arctic terns of the Anglesey Terns SPA.
- 1.1.3. Should the Secretary of State conclude an adverse effect, and is satisfied that there are no alternative solutions, and that imperative reasons of overriding public interest have been demonstrated, then compensation will need to be secured. NRW provide advice below (sections 2 and 3) on amendments that are required to the draft DCO in order to secure appropriate compensation measures that would meet the requirements of Regulation 68 of the Conservation of Habitats and Species Regulations 2017, and the Habitats Directive.
- 1.1.4. NRW also provide advice on the Tern Compensation Strategy which has also been included in the Sub-CoCPs as explained in 1.1.1 above. NRW note that, as this is the final deadline of the Examination, that it would not be possible for the Applicant to update the Sub-CoCPs. There may therefore be examples where the Sub-CoCP would be in conflict with the DCO when made (e.g. Sub-CoCP refers to the need to deliver 2 sites in respect of the compensation needed whereas the Requirement that NRW is advising would refer to the need to deliver 4 sites).

2. DCO Requirement

- 2.1.1. NRW provide advice below on amendments needed to the draft DCO Requirement that has been proposed, and the reasons for those amendments. For completeness, NRW collates those amendments (in **red**) into the proposed DCO Requirement in **Box 1**.

- *Number of sites*

- 2.1.2. NRW has previously advised the Applicant that four sites should be provided, rather than 2 as currently proposed by the Applicant. NRW advise this is required in order to provide adequate compensation, as explained below:
- The compensation proposals are essentially experimental in nature and, in view of the uncertainty of success at any given site, the provision of 4 sites should provide an acceptable likelihood of success for the compensation proposals. As detailed in paragraph 1.1.4 of NRW's Deadline 8 submission [REP8-080], it is far from guaranteed that the terns will translocate to a new site and therefore by having an appropriate number of sites, there is a reasonable chance of success for the compensation proposals. The translocation to different sites will be an iterative process, trialling different methods to see what works at the different sites; thus an appropriate number of sites allows different techniques to be tried out. NRW advises that 4 is an appropriate minimum number of sites to provide an acceptable likelihood of success for the compensation proposals.
 - There are recognised challenges of delivering compensatory proposals for all three species of breeding terns, particularly Sandwich terns. NRW consider that the current situation at Cemlyn, where these three species of terns co-exist at the same site, is rare if not unprecedented. As a result, we consider that the likelihood of achieving the same co-habitation situation at the compensation sites should be assumed to be minimal and as a result, different sites should be designed with different species in mind. NRW consider that provision of four sites should provide an acceptable likelihood of success and should provide alternative breeding habitats for Common, Arctic and Sandwich terns whilst minimising competition between species.
 - In addition to point b) above, the 4 sites identified in **Box 1** are geographically spread between the east and west coast of Anglesey as well as on the mainland. Sandwich terns tend to forage in different areas to Common and Arctic terns (e.g. Sandwich terns tend to forage along the east coast of Anglesey). The provision of only 2 sites, particularly should both be located within the same foraging area, may not deliver compensation for all three tern species. NRW consider that the provision of the 4 sites would provide suitable breeding habitats and access to different foraging areas and therefore greater opportunity for colonisation by all three tern species.
- 2.1.3. We note that the Applicant has proposed alternative wording to the DCO Requirement in paragraph 1.3.6 of the Tern Compensation Strategy should the Secretary of State deem 4 sites to be required. For completeness and to avoid any doubt, NRW has included the wording that the Applicant has proposed for inclusion in **blue** in **Box 1** below. NRW's amendments to the DCO Requirement proposed by the Applicant are provided in **red**.
- 2.1.4. NRW has been advising the Applicant in its development of the Tern Compensation Strategy, and the draft Requirement that NRW reviewed prior to Deadline 9 included the following at the end of the list of identified sites: "*any other site which forms a suitable compensation site for one or more of breeding*

Sandwich tern (Sternula sandvicensis), common tern (Sternula hirundo), or Arctic tern (Sternula paradisaea)”. This inclusion provides flexibility to the Applicant should it not be possible to develop the other identified sites. NRW advise that this inclusion is restored to the DCO Requirement (this has been included in **red** in Box 1 for ease of reference).

- 2.1.5. The Applicant has suggested the inclusion of the following within the Requirement for 4 sites: “*(2) Four Tern Compensation Sites are to be provided unless IACC and NRW agree that a site has become unavailable because the landowner will not provide the necessary real estate interests or for other reasons outside of the undertaker's control*”. NRW does not consider this sub-paragraph of the Requirement to meet the tests of being precise, enforceable and necessary for the purposes of planning policy, and that it should be removed (it is marked in **blue** strikethrough in Box 1). With the inclusion of the text outlined in 2.1.4 above, NRW consider it to also be unnecessary.
- 2.1.6. The Position Paper on Compensation Measures submitted by the Applicant at Deadline 5 [REP5-046] considered Morfa Madryn and Glan Y Mor as a single site “*due to their proximity and functional links*”. However, in the Tern Compensation Strategy submitted at Deadline 9 they are identified as two separate sites. NRW advises that this site is one site in terms of management and the compensation that it would deliver and therefore should be considered as such. With regard to NRW’s reference above to the need for 4 sites, the Glan y Môr and Morfa Madryn site is considered by NRW as one site.

- *Timing of delivery of compensation*

- 2.1.7. The compensation proposals do not consider the breeding period of Black-headed gulls and the establishment period of the terns. Both of these are integral to the success of the colony or to establishing a new colony. Therefore the “*Tern breeding period*” should be amended and be defined from the 15th March to 15th August, but allowing variations agreed with NRW and NWWT.
- 2.1.8. The Tern Compensation Proposal [REP9-028] (and the Sub-CoCPs) state in paragraph 2.3.2 that “*two sites will be provided prior to the start of a full tern breeding period*”, but then states in 2.3.3 “*Horizon will aim to establish at least one site and the second if possible a full breeding season before works commence on the WNDA*”. NRW advise that 4 sites should be provided (see paragraph 2.1.2 above) and that ideally all 4 sites would be provided a full breeding period **before** work commences to allow for the prospecting of sites by terns (and black headed gulls) and the establishment and management protocols to be tested prior to the potential for an adverse effect to arise. However, NRW consider that it may be acceptable for the requirement to deliver the sites a full breeding season prior to construction to be reduced to two sites, depending on the compensation available at those sites (i.e. that they provide compensation for Sandwich, Arctic and Common terns, noting our comment in 2.1.2 that the 3 species rarely co-exist). We therefore advise the inclusion of the following additional text in the DCO Requirement:

(5) A minimum of 2 compensation sites must be delivered a full Tern breeding period prior to construction.

- 2.1.9. NRW considers that a minor correction is required in the text provided by the Applicant for the Requirement for 4 sites. Sub-paragraph (1) of the Requirement refers to “*...in accordance with the establishment and management scheme approved under sub paragraph (2)...*”. However, NRW consider it should read “*in accordance with the establishment and management scheme approved under sub paragraph (3)...*”. NRW has provided its understanding of the correct wording in **Box 1**. Please note, should the Secretary of State agree that sub-paragraph (2) is not required as it is unnecessary and not enforceable (see paragraph 2.1.5 above), NRW consider the original text provided by the Applicant would then be correct (i.e. as the previous sub-paragraph (2) will have been removed).

BOX 1

"Tern breeding period" means the period from the date on which the first terns begin to establish nests at the Cemlyn Lagoon tern colony (the start date) until the point where late or second nesting tern chicks fledge and begin to leave the colony. These dates are anticipated to be 15 **March** to 15 August each year but will vary on an annual basis to take account of early or late arrivals and departures. Such variations are to be agreed with the NWWT site managers and NRW. Nest establishment will be defined as activities that constitute the establishment of nesting territories by any tern species that is a qualifying feature of the Morwenoliaid Ynys Môn/Anglesey Terns Special Protection Area, these being aerial display flights over the nesting islands and/or courtship behaviour on the ground by scrape making.

If the Cemlyn Lagoon colony observers (to be in place from early March) determine that the Black-headed gulls nesting behaviour appears to be affected by construction noise (if there is a lack or low numbers (based on Black-headed gull status and trends) of recorded Black-headed gull nesting attempts) then the start date shall be deemed to be the date such determination by the Cemlyn Lagoon colony observers is notified to and confirmed by the ECoW.

"Tern Compensation Strategy" means the strategy included in Section 13 of the Main Power Station Site sub-CoCP and Marine Works sub-CoCP setting out the measures to provide suitable compensatory habitat for one or more of breeding Sandwich tern (*Sterna sandvicensis*), Common tern (*Sterna hirundo*), or Arctic tern (*Sterna paradisaea*) on a Tern Compensation Site.

"Tern Compensation Sites" means any of:

- the identified sites at:
 - Dulas Bay;
 - Glan y Môr;
 - Morfa Madryn;
 - Abermenai Point; ~~or~~
 - 'Tern Island' (Inland Sea); ~~or~~
 - **any other site which forms a suitable compensation site for one or more of breeding Sandwich tern (*Sterna sandvicensis*), common tern (*Sterna hirundo*), or Arctic tern (*Sterna paradisaea*).**

WN[x]

(1) No Works shall commence on the WNDA unless, ~~and subject to sub-paragraph 2,~~ four Tern Compensation Sites have been provided, in accordance with the establishment and management

scheme approved under sub paragraph (3), prior to the start of a full tern breeding period.

~~(2) Four Tern Compensation Sites are to be provided unless IACC and NRW agree that a site has become unavailable because the landowner will not provide the necessary real estate interests or for other reasons outside of the undertaker's control.~~

(3) No works for the provision of a Tern Compensation Site may commence until an establishment and management scheme for that Tern Compensation Site has been prepared in accordance with the principles in the Tern Compensation Strategy, submitted to IACC and approved by IACC (in consultation with NRW).

(4) The provision of the Tern Compensation Sites and their ongoing management must be carried out in accordance with the establishment and management scheme approved under sub paragraph (3), unless otherwise approved by IACC.

(5) A minimum of 2 compensation sites must be delivered a full Tern breeding period prior to construction

(6) Sub paragraph (1) shall not apply to Work No 3 or Work No 12 (except no works may be commenced on land to the west of Afon Cafnan as identified on [Drawing WN0903-JAC-OS-DRG-00034] (Appendix 1-1) during the tern breeding period, unless otherwise agreed with IACC).

3. Tern Compensation Strategy:

3.1.1. The Tern Compensation Strategy is included in the Main Power Station Site Sub-CoCP [REP9-011] and the Marine Works Sub-CoCP [REP9-013]. NRW do not agree with all the contents in the Sub-CoCP. The comments below are therefore for the Applicant to consider in the submission of the establishment and management scheme:

- a) Paragraph 2.4.3 specifies establishment measures, however, NRW do not consider these to be exhaustive and considers that there are likely to be further measures that would be appropriate.
- b) NRW has concerns on the area of operational land identified for some of the compensation sites:
 - i. Morfa Madryn / Glan y Môr Elias: The proposed area of control does not encompass the tip of the shingle spit, which could be problematic if the terns adopt that area (where they already roost on regular occasions). We advise that this area should be included.
 - ii. Abermenai Point: The proposed area of control is inadequate and does not encompass the area of likely colony establishment. It is recommended that at least the southern half of the curved tip of Abermenai Point needs to be controlled given the need to inform visitors to this popular anchorage. Note also that the proposed access to the site along the public right of way across Traeth Melynog is often impassable due to tidal inundation and that shoreline access along the beach or above the saltmarsh is recommended.

4. Tern Compensation – conclusion

4.1.1. NRW provide advice above on amendments that are required to the draft DCO in order to secure appropriate compensation measures that would meet the requirements of Regulation 68 of the Conservation of Habitats and Species Regulations 2017. NRW advise that the draft DCO Requirement provided in **Box 1**

is included in the DCO if made. Through the inclusion of the Requirement provided in **Box 1** then NRW would advise that appropriate compensation will be secured and that the overall integrity and coherence of the SPA network would be maintained.

[CONTIUNED]

ANNEX B – NRW'S RESPONSE TO THE APPLICANT'S COMMENTS ON THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES)

1. Anglesey Terns SPA

- 1.1.1. NRW provided its advice at Deadline 9 [REP9-037] on the Report on the Implications for European Sites (RIES) in its role as the Appropriate Nature Conservation Body. NRW advised in [REP9-037] that it was not possible to rule out an adverse effect on the Anglesey Terns SPA.
- 1.1.2. NRW has provided advice throughout the Examination, including on the information provided by the Applicant. In its Deadline 9 response on the RIES [REP9-005], the Applicant referred in paragraphs 2.1.1 – 2.1.4 to matters that have been previously discussed during the Examination. NRW have previously advised on the matters raised (Deadlines 2, 4, 5, 7, 8 and 9) and will not re-iterate those points in this submission however we do consider the following points should be considered in response.
- 1.1.3. In paragraph 2.1.1, the Applicant refers to specific reactions of terns discussed in the observational (disturbance) monitoring (ES Appendix D13-7 [APP-225]) e.g. the slamming of a tractor door and grain store door. However, NRW consider these examples are provided out of context. As detailed in paragraphs 7.8.29 of NRW's Deadline 2 submission [REP2-325], the observational monitoring assumes that only the disturbance responses recognised by the observers are important. In fact, stress, manifested as changes in hormone levels may be experienced but not be observable, particularly if an observable response (such as taking flight) would be unlikely to be appropriate for the type of disturbance. 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, but this should not be interpreted as generating no response or, more importantly, that there is no ultimate effect on body condition or breeding performance.
- 1.1.4. Also in relation to paragraph 2.1.1, the observers allocated 11% to 12% of the responses to 'obvious' anthropogenic sources. Of the obvious anthropogenic sources of disturbance, these will have been occurring regularly, over many years, and so the colony will have developed a degree of habituation to these events. In comparison, the construction noise will be both novel to the area and frequent and thus, very different in pattern to the more sporadic and infrequent events currently observed. It therefore cannot be assumed that birds will habituate in the same manner or even show any degree of habituation.
- 1.1.5. NRW advise 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. 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.

- 1.1.6. Paragraph 2.1.3 refers to the Applicant's mitigation. As detailed in paragraph 2.1.3 of NRW's Deadline 5 submission [REP5-081], NRW has significant concerns regarding the effectiveness and deliverability of the mitigation proposed. For example, NRW has concerns that, where noise levels are exceeded, the decision-making process on mitigation measures will be guided by a number of criteria. These criteria include safety considerations, the availability of equipment and impacts on the overall construction programme. In view of these criteria, there is the possibility that a disturbing activity could be allowed to continue without mitigation being implemented and therefore it cannot be demonstrated that the mitigation will be effective.
- 1.1.7. Paragraph 2.1.4 of the Applicant's [REP9-005] states "*while Horizon respects NRW's position as the SNCB in Wales, no evidence has been provided or sought to be provided by NRW to evidence a predicted adverse effect on the Anglesey Terns SPA. By contrast, Horizon knows the noise levels at which the Cemlyn terns react and are disturbed...*". 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 advice is that it cannot be demonstrated, beyond reasonable scientific doubt, that the conservation objectives will not be undermined and that there will be no adverse effects on the integrity of Anglesey Terns SPA.
- 1.1.8. As detailed in its Deadline 7 submission [REP7-012], 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 advise that there is reasonable scientific doubt, in this case, regarding the absence of adverse effects on the integrity of the SPA.

[CONTINUED]

ANNEX C – WYLFA NEWYDD ARTICLE 4(7) WATER FRAMEWORK DIRECTIVE ADVICE

1. Background

1.1.1. Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy (Water Framework Directive), articles 4(7), 4(8) and 4(9) states:

Article 4(7)

Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities and all the following conditions are met:
 - (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
 - (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
 - (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
 - (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

Article 4(8)

When applying paragraphs 3, 4, 5, 6 and 7, a Member State shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.

Article 4(9)

Steps must be taken to ensure that the application of the new provisions, including the application of paragraphs 3, 4, 5, 6 and 7, guarantees at least the same level of protection as the existing Community legislation.

- 1.1.2. In this application for a Development Consent Order under the Planning Act 2008, the decision as to the application of Article 4(7) of the Water Framework Directive (WFD) rests with the Secretary of State (SoS). The advice below is provided by NRW to advise the ExA in making its recommendation to the SoS. It considers those matters under Article 4(7) that fall within NRW's remit. It will be for the ExA, and ultimately the Secretary of State, to decide how much weight to give to this advice in coming to their final judgment.
- 1.1.3. NRW advise on the application for Development Consent Order only. It does not address any matters under Article 4(7) that may be required as part of the determination process for other consent applications of this development.
- 1.1.4. In order to assist the ExA, NRW has sought to provide advice on the implications of the Wylfa Newydd Project on Water Framework Directive compliance. Our advice should be considered solely in relation to the specific provisions of the WFD.
- 1.1.5. All references to documents stated in this Annex are given in section 9.

2. Scope

- 2.1.1. NRW's advice on the application of Article 4(7) is given in the following interpretative context:
 - a) Article 4(7)(a): NRW will assess the adequacy of the mitigation measures proposed in the specific context of the objectives sought to be achieved under the WFD;
 - b) Article 4(7)(c): NRW will only assess the first limb of this test, namely the "overriding public interest" test;
 - c) Article 4(7)(d): When assessing whether there is a "significantly better environmental option", NRW has considered it appropriate to restrict its assessment to other options within Wales' territorial limits.

- *Pre-application advice*

- 2.1.2. NRW has provided advice and guidance to the Applicant during the pre-application stage as to the requirements under WFD, in particular making clear that Article 4(7) should be considered when assessing the development proposals. Table 1-2 of the Article 4(7) Information report [REP8-068] identifies advice and guidance on Article 4(7) provided by NRW (directly to the Applicant) up to December 2017. The advice provided was based on the information available at the time. In relation to Article 4(7), the following key advice was provided:
 - a) NRW had a meeting with the Applicant on 19/12/2017 and provided advice on the Applicant's first draft of the Article 4(7) report. NRW provided its detailed advice in writing on 23/1/2018.
 - b) NRW provided advice on the Applicant's second draft of the Article 4(7) report on 21/3/2018. The Applicant was not able to take into account those comments in the Article 4(7) Information report submitted as part of the DCO application. The Applicant considered these comments provided by NRW on

the 2nd draft in its preparation of the updated report submitted at Deadline 6 [REP6-025].

- *Advice provided through the DCO Examination*

- 2.1.3. Following submission of the DCO application on 1st June 2018, additional information has been provided by the Applicant throughout the duration of the DCO Examination. Further advice has been submitted by NRW on the WFD Compliance Assessment, to advise which waterbodies (and their elements) that may deteriorate and for which an Article 4(7) derogation would be required. Key advice provided by NRW is summarised as follows:
- NRW agrees with the Applicant that the Ynys Mon Secondary groundwater body may deteriorate. This is due to both saline intrusion and effects on Tre'r Gôf SSSI Groundwater Dependent Terrestrial Ecosystem (GWDTE).
 - NRW agrees with the Applicant that the Skerries coastal water body may deteriorate; this is as a result of effects on the hydromorphological quality element.
 - In relation to the Skerries coastal water body, NRW advised that further information was required to demonstrate whether the benthic invertebrates elements may deteriorate. Additional information with respect to benthic invertebrates was provided in the Applicant's response to NRW's Written Representations [REP3-035]. NRW advised at Deadline 5 [REP5-081] that the benthic invertebrates element in the Skerries Coastal water body should be considered for derogation under Article 4(7) in addition to the hydromorphology on the basis that the hydromorphology is a supporting element to the biology, and that benthic invertebrates are the primary receptor to changes in the hydromorphology.
 - The Applicant, in its Deadline 6 response [REP6-027] to NRW's Deadline 5 submission, states that although it did not agree with NRW's conclusion with respect to benthic invertebrates, that it would provide materials to be considered under Article 4(7) in respect of benthic invertebrates. This information was submitted at Deadline 8 and is considered in NRW's advice on Article 4(7) in this submission.

- *Waterbodies and elements considered for Article 4(7)*

- 2.1.4. As explained in 2.1.3, the elements (surface water) and criteria¹ (groundwater) that may deteriorate (as identified by the Applicant's WFD Compliance Assessment [REP6-024] and further NRW advice provided during the DCO Examination (in relation to benthic invertebrates)) as a result of the Wylfa Newydd Project are:
- The Skerries coastal water body:
 - Hydromorphology elements supporting the biological elements
 - Composition and abundance of benthic invertebrate fauna element
 - Ynys Môn Secondary groundwater body:

¹ These are not elements but are parameters of groundwater quantitative status and groundwater chemical status. CIS 2017 refers to them as criteria.

- i. Saline intrusion
 - ii. Groundwater dependent terrestrial ecosystem (GWDTE)
- 2.1.5. This advice provided by NRW relates to these water bodies and elements/criteria. The ExA/SoS may conclude that further water bodies and/or elements should be included in the scope of Article 4(7). Therefore (and as detailed in paragraph 7.4.30 of NRW's Deadline 2 submission [REP2-325]), the Article 4(7) information may need to be updated by the applicant following the completion of the ExA / SoS's WFD Compliance Assessment and therefore NRW may provide further advice as considered necessary.

3. Article 4(7) (a): 'all practicable steps are taken to mitigate the adverse impact on the status of the body of water'

3.1. Methodology

- 3.1.1. NRW has considered the WFD elements and criteria which may deteriorate.
- 3.1.2. This advice is informed by the information made available to NRW by the Applicant in the Article 4(7) Report. Within the Article 4(7) Information report [REP8-068], the Applicant describes the project activities that could potentially cause deterioration and how they could impact on the classification criteria in the Ynys Môn Secondary groundwater body and the classification elements in the Skerries coastal water body (sections 3.3 and 3.4 respectively).
- 3.1.3. This advice is based upon the potential impacts of the Wylfa Newydd Project and the mitigation proposed with the objective of minimizing or cancelling the adverse impact on the status of The Skerries coastal water body and Ynys Môn Secondary groundwater body.
- 3.1.4. All practicable mitigation is that which is technically feasible, not disproportionately costly, and compatible with the new modification, in line with Common Implementation Strategy (CIS) (2017).
- 3.1.5. Mitigation is considered through the design, construction, maintenance and operational phases of the project.
- 3.1.6. Mitigation must be secured and legally enforceable.

3.2. Mitigation measures proposed

- 3.2.1. The Applicant has provided mitigation measures information following the template table provided (NRW, 2018). The mitigation measures in the Applicant's Article 4(7) Information report [REP8-068] are provided in Table 5-1 (saline intrusion) and Table 5-2 (GWDTE) for Ynys Môn Secondary groundwater body, and Table 6-1 for The Skerries coastal water body. The tables are therefore not reproduced here.

The Applicant also provided further rationale relating to acceptance or rejection of mitigation measures in Appendix 1 of the Article 4(7) report.

- 3.2.2. A range of mitigation measures for impacts of the Wylfa Newydd Project have been proposed by the Applicant as listed below. Enhancement measures have also been incorporated into the project design.

3.3. Mitigation measures for The Skerries coastal water body

- Mitigation measures considered and rejected*

- 3.3.1. Mitigation measures considered, but rejected by the Applicant, address impacts to both hydromorphology and benthic invertebrate elements unless otherwise stated.
- 3.3.2. The following potential mitigation measures were considered by the Applicant but rejected:
- a) Removal of hard engineering structures or modification of existing structures to mitigate impacts on hydromorphology. The Applicant considered this measure was not technically feasible as there were no structures in the water body to be removed.
 - b) Indirect/offsite mitigation (but still within the Skerries coastal water body) (offsetting measures). The Applicant rejected this measure as, although it is technically feasible to create new rocky intertidal habitat this would result in further losses of natural intertidal or subtidal habitat leading to further deterioration (in other words adverse impacts would not be avoided or minimised).
 - c) Replacement of hard shoreline protection with soft engineering to mitigate impacts on hydromorphology. The Applicant rejected this measure as not technically feasible because soft engineering such as saltmarsh or sand dunes would not provide the required protection.

- Mitigation measures considered and included*

- 3.3.3. Mitigation measures considered and included by the Applicant in relation to the Skerries coastal water body include:
- a) The footprint of the breakwaters, cooling water intake and outfall structures, temporary causeway and associated dredging activities were designed to be as small as practicable (whilst meeting operational requirements).
 - b) Dredging in Porth-y-pistyll will be restricted to the area identified in the dredging plan and the duration will be shortened as far as is practicable.
 - c) Provision of marine ecological enhancement measures in suitable locations (unconstrained by engineering design and functionality). These include:
 - 80 pre-cast vertical rockpools on the MOLF wall,
 - 10 precast rockpools in armour rock on the western breakwater,
 - seeding of areas of armour rock/rock revetment with natural rock won from the site where practicable (alternatively imported material akin to natural rock will be used)

- ecological enhancement of 16m³ precast concrete units on the breakwaters to include textured surfaces.
 - Retaining surface roughness within the dredged area to promote recolonisation.
 - Seeding or transplanting of marine kelp to subtidal areas
 - A monitoring programme to assess the effectiveness of the enhancement measures against a suite of clearly defined ecological objectives.
 - Provision of relevant monitoring data to local schools and universities to promote ecological enhancement of the marine environment.
 - The Applicant notes that there is some uncertainty about the degree to which ecological enhancements will result in an increase in colonisation and productivity of marine native fauna.
- d) Implementation of a monitoring programme for the marine ecological enhancement measures and permanent structures, determining the success of the measures by monitoring colonisation of new structures to allow adaptive management.

- *Consideration of all practicable mitigation in relation to the Skerries water body*

- 3.3.4. On the basis of the evidence available, as outlined in the Applicant's Article 4(7) Report a significant range of mitigation measures have been considered.
- 3.3.5. Following NRW's advice the Applicant has revised its marine ecological enhancement proposals [REP4-023] compared to earlier versions (set out in Annex A of the Applicant's Deadline 2 submission [REP2-023]). The level and number of measures that can be undertaken as part of the marine works (as described in the Article 4(7) report and in more detail in The Ecological Enhancements Mitigation Report [REP4-023]) has increased. The latter report allows a better understanding of the constraints around the design of marine structures, and the ecological enhancement measures that can be put in place. Based on the information available, NRW consider that further mitigation in addition to that currently proposed by the Applicant would not be practicable given the various engineering constraints of the project.
- 3.3.6. The Applicant's Article 4(7) report has not identified mitigation measures to address impacts to benthic invertebrates associated with Invasive Non-Native Species (INNS) arising from changes to hydromorphology. NRW consider that such mitigation measures should be considered. The Marine Works Sub-CoCP submitted by the applicant at deadline 5 included marine INNS measures. The Biosecurity Risk Assessment Strategy Report was also submitted at Deadline 5 and the Applicant stated that the "*biosecurity risk assessment strategy is a standalone document provided to support the Marine Licence*" (para 1.1.1). Paragraph 11.4.1 of the Marine Works Sub-CoCPs 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*". It also states that the principles of the Biosecurity Risk Assessment are contained in the Sub-CoCP. NRW is satisfied with this approach to INNS

mitigation. NRW agrees that the Biosecurity Risk Assessment and Method Statement may be secured by a condition of the Marine Licence. We note that the Secretary of State will need to decide whether the detailed biosecurity risk assessment should also be secured through the DCO and give consideration to any potential for regulatory overlap.

- 3.3.7. The Applicant identifies a monitoring programme for the marine ecological enhancement measures, with the provision of relevant monitoring data to local schools and universities to promote ecological enhancement of the marine environment, as mitigation measures. NRW considers that the monitoring programme for this purpose, although welcomed, is not a mitigation step in the context of Article 4(7).
- 3.3.8. NRW is satisfied that all mitigation and enhancement measures could be secured by mechanisms including the DCO and the relevant marine licence conditions.
- 3.3.9. The Applicant has provided appropriate information for NRW to be satisfied that technical feasibility has been applied to identify practicable mitigation measures.

3.4. Mitigation measures for saline intrusion to the Ynys Môn Secondary groundwater body

- 3.4.1. NRW is satisfied that all impact pathways, including those produced by direct dewatering on groundwater supporting Tre'r Gôf SSSI, are now considered by the Applicant.

- *Mitigation measures considered and rejected*

- 3.4.2. The following potential mitigation measures were considered by the Applicant but rejected:
 - a) Artificial ground freezing. The Applicant rejected this mitigation measure as the technology is uncertain and that environmental benefits are likely to be limited. The Applicant also considers the technical feasibility of inserting the associated pipework to be challenging.
 - b) Vertical grout curtains. The Applicant rejected this mitigation measures as the technology is uncertain and that environmental benefits are likely to be limited. The Applicant also considers the technical feasibility of inserting the physical barriers to be challenging.
 - c) Low permeability cut-off walls using piling. The Applicant rejected this mitigation measure as it is not considered to be technically feasible to install cut-off walls. The Applicant also considers that the environmental benefits are likely to be limited.

- *Mitigation measures considered and included*

- 3.4.3. Mitigation measures considered and included by the Applicant in relation to saline intrusion include:

- a) Placement of a semi-dry cofferdam in Porth-y-pistyll at the same time as deep excavations.
- b) Monitoring to determine if there is significant saline intrusion into the aquifer, and additional mitigation triggered by monitoring.
- *Consideration of all practicable mitigation in relation to saline intrusion in the Ynys Môn Secondary groundwater Body*

- 3.4.4. Mitigation measure YM1.2 refers to groundwater monitoring which, in itself, NRW would not consider to be a mitigation measure. However, we note that monitoring is linked to additional mitigation via trigger levels as part of mitigation measure YM1.3. Limited information is provided regarding the additional mitigation, however, based on the information available, we consider the proposals for grouting of major inflows is acceptable. We consider that alteration of the pumping regime may be impractical given the overriding requirement to keep the main excavation dry.
- 3.4.5. Shotcreting should reduce the flow into the basement and therefore reduce the degree of saline intrusion. The Article 4(7) Information report [REP8-068] does not identify shotcreting as a mitigation measure, however it is discussed as a mitigation measure in the WFD Compliance Assessment and is listed in the Construction Method Statement (which is secured under DCO Requirement PW3) and therefore is considered to be a step taken to mitigate adverse impact in the context of article 4(7).

3.5. Mitigation measures for Tre'r Gôf SSSI GWDTE in relation to Ynys Môn Secondary groundwater body

- *Mitigation measures considered and rejected*

- 3.5.1. None of the mitigation measures considered by the Applicant were rejected.

- *Mitigation measures considered and included*

- 3.5.2. Mitigation measures considered and included by the Applicant in relation to the Tre'r Gôf GWDTE include:
- a) Buffer strips around Tre'r Gôf SSSI;
 - b) Landscape mounding designed to avoid changes in catchment boundaries as far as practical, and timing of mounding to drier weather conditions;
 - c) Use of a permeable inert crushed rock drainage blanket below Mound A to the south and east of Tre'r Gôf SSSI and use of overflow pipes in the drainage system;
 - d) Drainage design (YM2.5 – YM2.9) including:
 - Drainage designed to maintain surface water balance within existing drainage catchments as far as is practicable.
 - Drainage of the landscaped areas designed to maintain flexibility so that changes can be made to water management during construction

- Drainage design strategy that seeks to be implemented to reduce potential effects on Tre'r Gôf SSSI.
- SuDS treatment train for drainage operation of the Site Campus
- Monitoring and active management of the drainage system to mitigate the effects of construction activities on surface water flow and quality at the Tre'r Gôf SSSI.
- e) Tre'r Gôf SSSI compensation package;
- f) Pollution prevention measures and prevention of contaminated runoff.
- g) Dewatering (YM2.13 – YM2.1) including:
 - Monitoring to determine if there is an effect on Tre'r Gôf SSSI from dewatering and mounding activities;
 - Additional mitigation options to be implemented if monitoring indicates an effect;
- h) Water level management of Tre'r Gôf;
- i) Lining of cooling water tunnels during excavation;
- j) Tre'r Gôf SSSI Hydroecological Monitoring and Mitigation Scheme.

- *Consideration of all practicable mitigation in relation to Tre'r Gôf SSSI GWDTE*

- 3.5.3. NRW agree that the success of a drainage blanket (YM2.3/2.4) below Mound A for mitigation of hydrological change remains highly uncertain; its primary purpose is mound stability.
- 3.5.4. Drainage design measures which include weirs, overflow pipes and SUDS (YM2.6/2.7/2.8) are accepted in principle as potential mitigation, however their long-term effectiveness is uncertain.
- 3.5.5. Mitigation measures YM2.5 and YM2.9 relates entirely to management of surface water level and quality and, as written, we advise is not mitigation for reduction in groundwater levels at the site.
- 3.5.6. Mitigation measure YM2.10 refers to the Tre'r Gôf SSSI compensation package which include the fen creation sites at Cors Gwawr and Cae Canol-dydd. These sites are however in a different groundwater body to Tre'r Gôf SSSI and cannot therefore be considered mitigation.
- 3.5.7. Mitigation measures YM2.11/2.12 refer to pollution prevention measures. Although welcomed, they are not related to the potential impact pathways identified in the WFD Compliance Assessment and therefore would not be considered mitigation measures.
- 3.5.8. Mitigation measures YM2.13 refer to groundwater monitoring which, in itself, NRW would not consider to be a mitigation measure. However, we note that monitoring is linked to additional mitigation via trigger levels as part of mitigation measure YM2.14. Limited information is provided regarding the additional mitigation, however we consider that controlling water loss from the site via the weir (short term) and recharge of groundwater may be effective as mitigation measures. Grouting of major inflows is also appropriate mitigation.

- 3.5.9. There is no consideration of passive dewatering around the site during operation, which is predicted to lower groundwater by several metres. This is still anthropogenic change to water level potentially significantly damaging a GWDTE over a long period. However, NRW is satisfied that the mitigation measures proposed in YM2.13 and YM2.14 would be sufficient to address any risks.
- 3.5.10. The Applicant has considered a range of mitigation measures for the potential effects of dewatering on the Ynys Môn Groundwater Body. There is no mention of mitigation for the effects of dewatering as a result of the construction of the cooling water tunnel, however we consider the monitoring and mitigation (YM2.13 and YM2.14) is appropriate mitigation for the effects of the cooling water tunnel, as well as for mitigating effects of the mounding and site campus.
- 3.5.11. NRW is satisfied that all relevant mitigation measures could be secured by the DCO.
- 3.5.12. The Applicant has provided appropriate information for NRW to be satisfied that technical feasibility has been applied to identify practicable mitigation measures.

3.6. Summary

- 3.6.1. On the basis of the evidence available, NRW considers that a reasonable case has been made that all practicable steps will be taken to mitigate the adverse impact on the status of the Skerries coastal water body and the Ynys Môn Secondary groundwater body.

4. Article 4(7) condition b: ‘the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;’

- 4.1.1. The reasons for the modifications will be reported in the next publication of the Western Wales River Basin Management Plan for the 3rd cycle (2021-2027).

5. Article 4(7) condition c: ‘the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development’.

- 5.1.1. Only the first limb of test c will be considered here - the reasons for those modifications or alterations are of overriding public interest. NRW informed the Planning Inspectorate (by email on 11/1/2018) of its intention to only consider the first limb.

5.2. Scope of overriding public interest

- 5.2.1. Overriding public interest in the context of the WFD is interpreted as overriding the objectives of the WFD (CIS, 2017). The overarching aim of the WFD is long-term sustainable water management based on a high level of protection of the aquatic environment. Specific objectives are defined in Article 4.1 which are to achieve good status in all surface and groundwater bodies and to prevent any further deterioration of status.
- 5.2.2. The Applicant has provided evidence in the Article 4(7) Information report [REP8-068] to inform the case for OPI describing the public need for energy, the public need for nuclear energy and the suitability of the Wylfa Newydd Project.
- 5.2.3. In providing its advice under Article 4(7)(c) NRW has referred to the European Common Implementation Standards Guidance (CIS 2009; CIS 2017). This also considers the similarity with the test of 'Imperative Reasons of Overriding Public Interest' under the Habitats Directive. NRW has supplemented the Applicant's information with its own evidence and considers this against the 4(7) tests within our remit.

5.3. Basis of advice on consistency of the project with overriding public interest.

- 5.3.1. CIS (2017) states that it is reasonable to consider the reasons of overriding public interest in a Water Framework Directive context refers to situations where plans or Projects envisaged prove to be indispensable within the framework of:
 - i. Actions or policies aiming to protect fundamental value for citizens' lives (health, safety, environment);
 - ii. Fundamental policies for the state and the society;
 - iii. Carrying out activities of an economic or social nature, fulfilling specific obligations of public services.
- 5.3.2. NRW has considered the Applicant's case which includes:
 - The importance of electricity for individuals and society.
 - UK Government policy for energy - Overarching National Policy Statement for Energy EN-1 (Department of Energy and Climate Change (DECC), 2011a). This highlights the need for new energy generation capacity, to provide energy security and to move towards lower carbon electricity generation.
 - The need for nuclear power in accordance with UK Government policy EN-6 National Policy Statement for Nuclear Power Generation (DECC, 2011b).
 - The identification and strategic assessment of Wylfa as a suitable location for a new nuclear power station following the UK Strategic Siting Assessment process described in EN-6.
 - Welsh Government ambition for low carbon electricity generation;
 - Direct and additional benefits that will be secured through the project - economic benefits and job creation; infrastructure improvements; tourism, education, local jobs and skills, health and well-being, housing fund, Welsh language and culture, biodiversity and environment and recreation benefits.

- 5.3.3. In accordance with CIS 2017 NRW has also considered:
- That the National Policy Statements EN-1 and EN-6 were subject to Appraisal of Sustainability under the Strategic Environmental Assessment (SEA) Directive;
 - The Government IROPI case following identification of possible adverse effects on nature conservation sites of European importance by the Nuclear NPS Habitats Regulations Assessment (HRA);
 - The case made by the Applicant in its Imperative Reasons for Overriding Public Interest Report (REP5-045), which the Secretary of State will consider if it concludes an adverse effect on the integrity of the Anglesey Terns SPA.
- 5.3.4. Considering point iii) in section 5.3.1 above, 'carrying out activities of an economic or social nature, fulfilling specific obligations of public services', NRW notes that the generation of electricity, as distinct from its provision, is not considered as fulfilling a specific obligation of public service.
- 5.3.5. The evidence above concludes that the Wylfa Newydd Project provides value for people and society and meets national policies, in accordance with points i and ii in 5.3.1.

5.4. Public Participation

- 5.4.1. CIS (2017) states that 'public participation will contribute considerably in determining overriding public interest'.
- 5.4.2. UK Government National Policy Statements EN1 and EN6 were subject to public consultation. Between November 2009 and February 2010 UK Government consulted on the six draft Energy NPSs and the Appraisals of Sustainability (AoS) that accompanied those NPSs. Government made changes to the draft Energy NPSs and AoSs and ran a second consultation from 18 October 2010 to 24 January 2011 (DECC, 2011c)
- 5.4.3. The Planning Act 2008 sets out statutory requirements for pre-application consultation, including public consultation, for Development Consent Orders. The Applicant has submitted a Consultation Report [APP-038 – APP-049] that details the consultation activities undertaken in respect of the DCO application. These are also summarised in paragraph 5.3.5 of the Article 4(7) Information report [REP8-068].
- 5.4.4. In view of the above, NRW consider there is adequate opportunity for public consultation to fulfil the test of OPI. It is for the ExA and the SoS to consider the range of views and opinions when deciding if the OPI test is met.

5.5. Summary

- 5.5.1. NRW considers that on the basis of the evidence available, a reasonable case has been made for the project being of overriding public interest.

6. Article 4(7)d: the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

6.1. Strategic level alternatives

- 6.1.1. The Applicant's Article 4(7) Information report [REP8-068] discusses alternative options to nuclear and large scale electricity generation and strategic alternatives to the Wylfa Newydd Development Area site location.
- 6.1.2. NRW considers that:
- The strategic case for nuclear power was assessed by the UK Government in the overarching energy NPS EN-1 (DECC, 2011a).
 - The strategic case for a new nuclear power station at Wylfa was assessed by the UK Government in the NPS for nuclear power generation EN-6 (DECC, 2011b).
- 6.1.3. NRW considers that on the basis of the evidence available, a reasonable case has been made for there being no significantly better environmental strategic alternatives.

6.2. Summary of strategic level alternatives

- 6.2.1. NRW considers that on the basis of the evidence available, a reasonable case has been made for there being no significantly better environmental strategic level alternatives.

6.3. Project level alternatives - The Skerries coastal water body

- Alternatives considered in the Article 4(7) Information report

- 6.3.1. The Applicant has set out project level alternatives for the Skerries in table 6-2. This table is not reproduced here. The Applicant also provided further rationale relating to the selection of alternative options in Appendix 2 and 3 of the Article 4(7) report.
- 6.3.2. Three options were considered for delivery of abnormal indivisible loads (AILs) to the Wylfa site. The Applicant selected delivery by sea to the development site using a marine off-loading facility (MOLF), rejecting the other options due to them not being significantly better environmentally.

- 6.3.3. Five options were considered for delivery of bulk materials to the Wylfa site. The Applicant selected delivery by sea to the development site using a MOLF. The Applicant rejected the other options due to either technical infeasibility or not being significantly better environmentally.
- 6.3.4. Four options were considered for location of the MOLF for delivery of AILs and bulk materials. The Applicant selected site 2, North of Porth-y-pistyll. The Applicant rejected the other options due to either technical infeasibility or not being significantly better environmentally.
- 6.3.5. Four options were considered for the configuration of the MOLF within Porth-y-pistyll. The Applicant selected option 3 – Ro-Ro MOLF and bulk materials MOLF located next to each other to the north of the intake structure with a gap between the land and the western breakwater only. The Applicant rejected the other options due to either technical infeasibility or not being significantly better environmentally.
- 6.3.6. Fifteen locations (along with design options dictated by the locations) for the cooling water intake were considered. The Applicant selected location E1, offshore in Porth-y-pistyll (requiring breakwaters for protection). The Applicant rejected the other options due to them not being significantly better environmentally.
- 6.3.7. Sixteen locations were considered for the cooling water outfall. The Applicant selected location K1, onshore at Porth Wnal. The Applicant rejected the other options due to them not being significantly better environmentally.

- *Consideration of significantly better environmental options*

- 6.3.8. On the basis of the evidence available, as outlined in the Applicant's Article 4(7) report a number of design related alternative options have been proposed and qualitative environmental considerations taken into account in those designs.
- 6.3.9. The Applicant has provided appropriate information for NRW to be satisfied that technical feasibility and environmental considerations have been applied in ruling out project level alternative options.

6.4. Project level alternatives - Ynys Môn Secondary groundwater body

- *Alternatives considered in the Article 4(7) Information report*

- 6.4.1. The Applicant sets out project level alternatives for the Ynys Môn Secondary groundwater Body in Table 5-4. This table is not reproduced here. The Applicant also provided further rationale relating to the selection of alternative options in Appendix 3 of the Article 4(7) report.
- 6.4.2. The options for location, depth and sequencing of excavations for Unit 1 and Unit 2 were considered. The Applicant selected a location on the south side of the existing power station, with an excavation base of -18mAOD and both units to be constructed together within a single excavation. The Applicant selected this option

on the basis of it having significantly better environmental and cost and safety benefits over the other options. NRW has not examined disproportionate cost in this case as it is satisfied (based on the evidence provided) that the other options are not significantly better environmental options.

- 6.4.3. The options for duration of dewatering the deep excavation were considered. The Applicant selected to dewater only during the construction period and avoid long term dewatering during operation with the use of passive drainage. The Applicant rejected the other option due to it not being significantly better environmentally.
- 6.4.4. The options for location and depth of the cooling water intake were considered (these being the key aspects for this in relation to the Ynys Môn Secondary groundwater body). The Applicant selected an onshore location on the Porth-y-pistyll foreshore. The Applicant rejected the other options due to them not being significantly better environmentally.
- 6.4.5. The options for location and construction phasing and timing of landscape mounds A and B were considered. The Applicant selected the proposed locations and the early completion of the slopes facing Cemaes and Tre'r Gof SSSI on the basis that the other options are not significantly better environmental options.

- *Consideration of significantly better environmental options*

- 6.4.6. On the basis of the evidence available, as outlined in the Applicant's Article 4(7) Information report a number of design related alternative options have been proposed and qualitative environmental considerations taken into account in those designs.
- 6.4.7. The Applicant has provided appropriate information for NRW to be satisfied that technical feasibility and environmental considerations have been applied in ruling out project level alternative options.

6.5. Summary

- 6.5.1. On the basis of the evidence available, NRW considers that a reasonable case has been made that the beneficial objectives served by these modifications to the Skerries coastal water body and the Ynys Môn Secondary groundwater body cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means, which are a significantly better environmental option.

7. Consideration of Article 4(8) and Article 4(9)

- 7.1.1. NRW considers that on the basis of the evidence available, the application of Article 4(7), subject to appropriate regulatory control, would not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district.

- 7.1.2. Having considered NRW's advice the decision maker must be satisfied that the application of a derogation under Article 4(7) is consistent with the implementation of other Community environmental legislation and guarantees the same level of protection as under existing EU legislation as per Article 4(8) and 4(9).

8. Summary

- 8.1.1. This advice is provided within the scope and caveats as detailed in section 2 of this Annex.
- 8.1.2. On the basis of the evidence available, NRW considers that a reasonable case has been made that all practicable steps will be taken to mitigate the adverse impacts on the status of the Skerries coastal water body and the Ynys Môn Secondary groundwater body.
- 8.1.3. NRW considers that on the basis of the information available that a reasonable case has been made that the reasons for the project are of overriding public interest.
- 8.1.4. On the basis of the evidence available, NRW considers that a reasonable case has been made that the beneficial objectives served by these modifications to the Skerries coastal water body and the Ynys Môn Secondary groundwater body cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means, which are a significantly better environmental option.
- 8.1.5. NRW considers that on the basis of the evidence available, the application of Article 4(7), subject to appropriate regulatory control, would not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district. Having considered NRW's advice the decision maker must be satisfied that the application of a derogation under 4(7) is consistent with the implementation of other Community environmental legislation and guarantees the same level of protection as under existing EU legislation as per Article 4(8) and 4(9).

9. References

Common Implementation Strategy (CIS) (2009). Guidance Document on Exemptions to the Environmental Objectives. Common Implementation Strategy for the Water Framework Directive (2000/60/EC). Guidance Document No. 20.

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[CONTINUED]

ANNEX D – NRW’S UPDATE ON, AND FURTHER ADVICE WHERE APPROPRIATE, ON OUTSTANDING ISSUES

1. WYLFA NEWYDD DEVELOPMENT AREA ISH (4 March)

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

- 1.1.1. As detailed in NRW’s Deadline 9 submission, 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.
- 1.1.2. At Deadline 9, NRW proposed amendments to the DCO Requirement for monitoring and mitigation in relation to Tre'r Gôf and Cae Gwyn SSSIs. The Applicant had confirmed that NRW’s amendments would be included **in an updated draft DCO submitted at Deadline 9, however we note that an updated draft DCO was not submitted at Deadline 9**. NRW advise that these amendments (as shown in paragraph 2.2.3 (Annex B) of NRW’s Deadline 9 submission [REP9-037]) are included at Deadline 10; NRW would have significant concerns if the Requirement was not incorporated as advised.

2. 3rd DRAFT DCO ISH (6 March)

2.1. Draft DCO – NRW Permitting Service comments

- 2.1.1. At Deadline 9, NRW advised that amendments were required to the draft DCO submitted at Deadline 8 [REP8-029], including with respect to NRW’s role as a discharging authority.
- 2.1.2. We note at Deadline 9 that the Applicant has responded to the ExA’s Rule 17 Request for Further Information and made further representations with regard to the Memorandum of Understanding between NRW and IACC. NRW has made its concerns clear with respect to the amendments proposed by the Applicant (see paragraphs 3.1.10 – 3.1.13 (Annex B) of NRW’s Deadline 9 submission [REP9-037]).
- 2.1.3. It is understood that the Applicant’s concerns on this matter is in seeking comfort on the progress with respect to the development of the Memorandum of Understanding. To assist in this matter, we understand that the Isle of Anglesey County Council will be providing a copy of the latest draft of the Memorandum of Understanding, for information purposes, at Deadline 10.

- *Marine enforcement authority*

2.1.4. NRW supports the proposal for the Welsh Ministers to undertake the enforcement powers in respect of land seaward of mean high water springs, provided that such a requirement is lawful. If the ExA/SoS is satisfied that this can be lawfully secured, NRW supports the following requirement wording (in red):

For the purposes of section 173 of the 2008 Act, the Welsh Ministers will be the relevant local planning authority in respect of land seaward of the mean high water springs.

2.2. Section 106 (Hearing Action Point 35)

- *AONB Fund*

- 2.2.1. 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 Wylfa Newydd Development Area.
- 2.2.2. The Applicant has submitted a final section 106 agreement at Deadline 9 [REP9-004] which include an AONB fund. NRW can confirm that it is satisfied that the updated section 106 will enable offsite mitigation of visual impacts with respect to the AONB.

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