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PCC/ECR PLANNING

25 OCT 2013

RECEIVED

Gwilym Davies  
Powys County Council Planning Department  
The Gwalia  
Ithon Road  
Llandrindod Wells  
Powys  
LD1 6AA

23<sup>rd</sup> October 2013

Dear Gwilym

**PROPOSAL: REQUEST FOR SCOPING OPINION UNDER REGULATION 10 OF THE TOWN & COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND & WALES) REGULATIONS 1999 (AS AMENDED) IN RESPECT OF A 12 TURBINE WINDFARM  
LOCATION: LAND AT HENDY, LLANDEGLEWY, POWYS**

Thank you for seeking the NRW advice on the information that should be included in an Environmental Impact Assessment for the above proposed development.

In discharging its functions under section 130 of the Environmental Protection Act 1990, The Natural Resources Wales (NRW)

Please note that our comments set out those matters NRW consider should be addressed as part of an Environmental Impact Assessment (EIA), and are without prejudice to any comments we may wish to make when consulted on any subsequent planning application. Given that there can sometimes be a considerable lapse of time between commenting on a scoping report and the submission of a planning application and its supporting information, new information may emerge that NRW will need to take into account and comment on when making a formal response to the planning authority on any subsequent planning application.

The EIA for this development should include sufficient information to enable the Local Planning Authority to determine the extent of any environmental impacts arising from the proposed scheme on protected species and other nature conservation, countryside and landscape interests.

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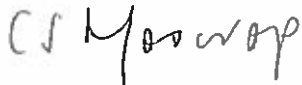
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It is important that the EIA is based on comprehensive, sound ecological baseline surveys and that these are followed up with appropriate monitoring programs and contingency plans to address any potential ecological issues.

Additionally, it is important that all aspects of the proposal are fully assessed. The impacts of grid connections, transport links and other ancillary infrastructure should therefore be covered in the EIA for the proposed development as they both have the potential for significant impacts on landscape and nature conservation interests beyond the boundary of the development site.

Our detailed comments are included in the attached Annex 1 along with additional advice in Annexes 2-3.

Yours sincerely



Caroline Moscrop  
Arweinydd Tim / Team Leader  
Maesyfed a Gogledd Brycheiniog / Radnor & N Brecknock

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# ANNEX 1: THE COUNTRYSIDE COUNCIL FOR WALES' (NRW's) SCOPING ADVICE FOR AN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) FOR THE PROPOSED WIND FARM AT LAND AT HENDY BANK, LLANDEGLEWY, POWYS.

## 1. Guidance

We recommend that the Environmental Impact Assessment (EIA) makes reference to the latest policy guidance including the following documents:

### National Documents

- Welsh Government (Edition 5, November 2012). *Planning Policy Wales*. Welsh Government, Cardiff.
- Welsh Government (September 2009). *Technical Advice Note 5 - Nature Conservation and Planning*. National Assembly for Wales, Cardiff.
- Welsh Office Circular 11/99: *Environmental Impact Assessment (EIA)*.
- Welsh Government (2005). *Technical Advice Note 8 – Planning for Renewable Energy*. Welsh Government, Cardiff.
- Welsh Government (2010). *A Low Carbon Revolution - WAG Energy Policy Statement*
- Welsh Government (2009). *One Wales: One Planet. The Sustainable Development Scheme of the Welsh Assembly Government*.

## 2. Description of the project

The entire scheme should be described in detail. Impacts evaluated should include: direct and indirect; secondary; cumulative; short medium and long term; permanent and temporary; positive and negative impacts on the natural heritage resource, including landscape, and public access. The description should cover all phases of development - construction, operation and decommissioning - and include detailed, scaled maps and drawings as appropriate.

We expect the description to include:

- The purpose and physical characteristics of the proposals;
- Location, development size and configuration of the development including flexibility of the site layout (including alternatives) and details of the connection to the National Grid;
- Land use requirements and other physical features of the project;
- Procedures for good working practices;
- Resource use, including waste, minerals and energy;
- Identification of appropriate pollution contingency and emergency measures;
- Timing of all works and contingency plans should slippage in the programme occur;
- Details of noise and dust levels;
- Details of construction works including methodology, location and extent of construction sites, construction access/working corridors and stock piling sites;

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- Quantity and content of any discharges from the development site;
- Identification of pollution contingency and emergency measures;
- Details of source, type and quantity of any filling material required;
- Details of the disposal of any surplus material e.g. material displaced from constructing bases or access roads;
- Maintenance requirements of structures;
- Maintenance of any habitats and species within the site;
- Monitoring requirements of habitats and species within the site;
- Details of access routes/transport links, alterations to traffic flows, including the type and frequency of vehicles, noise and dust levels;
- Identification of appropriate contingency plans for any emergency incidents on the site.

NRW recommend that the decommissioning phase is also included within the scope of the EIA, so far as this might be practical, since when turbines or other structures pass their useful life it would be expected that they will be removed from the site and recycled or disposed of in an environmentally sound manner.

Whilst it is acknowledged that design parameters need to allow for minor variations in scheme design (i.e. micro-siting) they should not be so great as to constitute a material departure from the scheme design assessed in the EIA or, result in a different assessment outcome. The Environmental Statement (ES) should make clear that any changes within the parameters proposed will not result in significant effects not previously identified in the assessment of the EIA.

## **2.1. Illustrations within the ES**

Any maps, drawings and illustrations that are produced to describe the project should be designed such that they can be overlaid on maps, drawings and illustrations produced for other sections of the EIA such as biodiversity. For example, it is particularly important that turbine locations can be shown in relation to vegetation survey maps.

## **2.2. Layout of Turbines**

Appropriate illustrations should be included in the ES to confirm the locations of each turbine. If turbines of different heights will be deployed the height of each turbine should be clearly shown.

## **3. Ancillary and associated development**

Projects such as this bring with them their own related developments, often referred to as ancillary and associated development (outside of the development boundary). These may be constructed and operated by a different developer (e.g. grid connection) and could potentially be assessed as a separate project, but are inextricably linked to the original project. The cumulative impacts of the project and its related development could potentially be significant. If however, the related development is not included in the assessment, the ES may not identify the full scope of impacts and would therefore not fully reflect the environmental impacts of the whole project.

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Information on ancillary and associated development which may be carried out by the same or another developer should be included in the scoping exercise. This information will enable potential indirect and cumulative impacts and impact interactions arising from that development to be considered as early as possible in the Environmental Assessment. If insufficient information is available to allow an assessment, this should be reported in the ES to ensure that it is considered as part of the decision-making process.

Types of *ancillary* development that should be considered where possible in the Environmental Assessment include:

- access roads;
- grid connection (overhead lines or buried cables);
- electricity sub-stations;
- quarries or borrow pits for the supply of materials;
- construction compounds;
- disposal sites.

The scoping report produced by Njord Energy states that the grid connection “may be overhead or underground or a combination of these” and that the exact point of connection has not yet been determined.

Types of *associated* development that may have to be considered where possible in the Environmental Assessment include:

- Changes to the road networks
- Changes to road structures

Failure to consider the impacts of related development linked to this proposed development is likely to render the EIA incomplete as it will not have considered all the impacts of the proposal.

#### **4. Landscape and visual effects including cumulative effects**

NRW advise that a full landscape and visual assessment will be required for this scheme. We advise that the *Guidelines for Landscape and Visual Impact Assessment* published by the Landscape Institute are followed. Please note that a third edition of the *Guidelines for Landscape and Visual Impact Assessment* was published in May 2013. The latest edition available at the time of the LVIA should be used. The Landscape Institute has produced guidance on the transition of its use.

The EIA should include a description of all the existing landscape interests within and in the vicinity of the proposed development. This should be done using LANDMAP methodology. LANDMAP is an all-Wales GIS based landscape resource where landscape characteristics, qualities and influences on the landscape are recorded and evaluated into a nationally consistent data set. LANDMAP comprises five

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spatially related datasets known as Evaluated Aspects: the five layers are the Geological Landscape, Landscape Habitats, Visual & Sensory, Historic Landscape and Cultural Landscape. All information is managed through a Geographical Information System and associated Collector database.

Where all five layers of LANDMAP data for the local authority are available, they should all be referred to. If the developer experiences difficulty in getting this data from the LANDMAP website it should be possible for the data to be obtained by contacting Jill Bullen, our LANDMAP Wales Coordinator at our Bangor headquarters. NRW would expect any ES to demonstrate use of all five data sets in the Landscape and Visual Assessment for any wind farm application. NRW recommends that the impacts of any development proposals on the landscape character of the area and its visual effects are assessed against the findings of this study.

There are particular characteristics associated with wind farm developments that are sources of impact on landscape character and visual amenity:

- Frequent location in elevated/exposed sites which are often highly scenic and exposed to view over a wide area;
- Movement of turbine blades attracts attention;
- Sound of the turbines can attract attention;
- Shadow can add to the sense of movement;
- Colours of turbines, particularly if they catch the sun can increase their visual prominence.
- Cumulative impact with other proposed, consented and developed windfarms in the vicinity

Such issues should all be addressed in the EIA and visual appraisal of the scheme in addition to specific site issues such as:

- Development infrastructure –, substation, cabling, ancillary buildings, working compounds, borrow pits and sediment settling ponds should all be considered in the assessment, even if 'temporary' (ie. only for the duration of construction works).
- The removal and disposal of any excavated materials such as soil or rock;
- Creation of new access tracks and re-profiling of existing ones;
- Transmission route connections to the main power grid; it is important that a landscape assessment of the connection route from the wind-farm development to the power grid is included for consideration, particularly given the potential for other wind-farms in the near and wider vicinity.

#### **4.1 Historic Landscapes**

The EIA should consider the presence of any historic landscapes in the area and the potential impact that the proposed development may have on these.

In accordance with Planning Policy Wales and the guidance in the '*Guide to good practice on using the register of landscapes of historic interest in Wales in the planning and development process*' 2<sup>nd</sup> Ed.

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(CADW, 2007), an Assessment of the Significance of Impacts of Development on Historic Landscape (ASIDOHL) is expected for any development which is of such a scale it would have more than local impact on an area on the Register. Copies of this publication may be obtained from NRW if required.

We also recommend that you consult with Cadw over these proposals in relation to historic landscapes, Scheduled Ancient Monuments (SAMs) and any other historical feature that may be affected by these proposals.

#### **4.2 Viewpoints**

The scoping report included the proposed viewpoint locations and NRW welcomes the opportunity to comment on these.

NRW would like a viewpoint from the open land at Gwaunceste Hill, perhaps instead of viewpoint 5. If VP 5 is retained, it should be moved so that the view is not obscured by woodland.

A viewpoint from Glyndwr's Way at SO188738 should be included.

#### **4.3. Protected landscapes in the vicinity**

The landscape and visual impact assessment (LVIA) should use appropriate viewpoints to consider the impacts of the proposals on the protected landscapes as there is potential for it to be visible from a wide area surrounding it.

#### **4.4. In combination effects with other potential wind farm developments**

In assessing the potential impacts of the proposed development on ecological and landscape interests, the EIA should consider the potential cumulative impacts of this wind energy development along with:

- Other wind energy developments in the area that already exist or have planning permission; and
- Proposals for other wind energy developments in the area that are in the public domain (i.e. those that are presently under consideration in the planning system).

We refer the developer to the relevant local planning authorities for comprehensive information in this respect.

#### **4.5. Co-operating with other wind farm developers in the area**

If there are other proposals for wind farm developments in the area, we encourage the developer and their advisers to work with the developers of other proposals in obtaining and sharing survey information, design layouts, providing sufficient information about cumulative impacts, and developing surveillance and monitoring plans for construction and operational phases of the development

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In our view, a collaborative approach would be the most effective way of developing comprehensive and coherent surveillance and monitoring plans for the construction and operational phases of several adjoining wind farms. A collaborative approach may also reduce costs (e.g. of surveys and monitoring) and assist in progressing applications through the planning system (e.g. by ensuring that sufficient information accompanies each application)

#### **4.6. Photographs and photomontages**

The views in photographs and photomontages taken to assist with this process should be representative of that observed from each viewpoint and not partially obscured by structures such as buildings, pylons, telegraph poles, trees etc. Cumulative photos/photomontages with other proposed, consented and developed windfarms should also be included in the ES.

### **5. Ecology**

#### **5.1 Phase I Habitat Survey**

A Phase I survey of the site should be undertaken to describe and map the key habitats of the site and species of particular importance. This should be undertaken in accordance with the NCC Phase I survey guidelines (NCC, 1990, see *Handbook for Phase I habitat survey*, JNCC, Peterborough) and should be undertaken and completed during the summer to ensure the best chance of identifying the habitats present.

We suggest that Jonathan Rothwell at NRW Bangor office is contacted for any Phase I survey data that may be available for this area (j.rothwell@NRW.gov.uk). However, we recommend that a new survey is completed if the survey data is not recent.

The Phase I survey should be mapped on an 1:10,000 Ordnance Survey basemap.

With the botanical information collected for the site the EIA should consider the potential effects of the proposals on habitats listed under S.42 of the NERC Act 2006 as considered to be of importance for the conservation of biodiversity in Wales (including local Biodiversity Action Plan (BAP) habitats). The Environmental Statement (ES) should detail the measures that will be put in place to ensure that the overall nature conservation resource will be conserved.

#### **5.2 Protected Species**

In the UK European Protected Species (EPS) are legally protected in the UK under the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations'). Developments likely to compromise the legal protection afforded to EPS will invariably require a licence from the Welsh Government to do so lawfully. Further details about the legislation afforded to EPS and the relevant licensing provisions are provided in Annex 3.

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Schedules 2 and 5 of the Conservation of Habitats and Species Regulations 2010 and Annexes II and IV, EU Habitats Directive (92/43/EEC) provide a complete list of plants and animals protected by European legislation.

In general we recommend that surveys for protected species are undertaken if the site falls within the geographical range of the species and there are records of the species within or in the vicinity of the proposed development site, and/or suitable habitats are present within the development site that could support the species.

These surveys should be undertaken by suitably qualified, experienced and where necessary, licensed surveyors in accordance with published guidance, where this exists, and best practice.

It should be noted that in many cases, no proactive survey work will have been undertaken to survey for species and the absence of records for a site should not be taken to indicate the absence of species of interest, but is more likely to reflect a lack of information. Development proposal sites must be comprehensively assessed for their potential to support protected species.

### **Surveys may need to be undertaken for the following species:**

#### **5.2.1. EPS: Bats**

Although research into the effects of wind turbines on bats is still ongoing, research undertaken to date indicates that bats are affected by wind turbine developments and there is increasing evidence to demonstrate that a number of bat species are present at upland sites. We therefore refer you to Natural England's interim guidance on '*Bats and Onshore Wind Turbines*' (May 2008) and the Eurobats guidance '*Guidelines for Surveillance and Monitoring of European Bats*' (2010). We advise that desk studies and field surveys are undertaken to establish:

- The presence and significance of any roosts within the development site and within 2km of it;
- Whether there are any key bat flight lines from roosts within 2km of the development towards the development site;
- Bat flight-lines through the development site and bat foraging areas within the development site.

All surveys for bats should be carried out in accordance with '*Bat Surveys: Good Practice Guidelines 2<sup>nd</sup> Edition*' (Bat Conservation Trust, 2012) and English Nature's '*Bat Mitigation Guidelines* (2004), and should be undertaken in favourable weather conditions (i.e. avoiding cold, wet and windy weather). Survey methodology used should provide a good baseline and be repeatable in post-development monitoring.

Activity surveys should identify specific species and record flight behaviour, the height above ground that observed bats were seen, and the proximity of observed bats to landscape features used as commuting corridors. Frequency division and time expansion equipment should be used.

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### **5.2.2. EPS: Great Crested Newts (*Triturus cristatus*)**

Surveys for great crested newts should follow the guidance provided in English Nature's 'Great Crested Newt Mitigation Guidelines' (2001). We draw your attention to the appropriate period for surveying ponds for the presence of great crested newts, which is mid-March to mid-June.

Annex 3 provides details of the legislation and licensing provisions concerning great crested newts. If great crested newts are likely to be affected by the proposed development, as for all EPS, full details will need to be provided of all the mitigation that will be implemented to maintain the favourable conservation status of the population(s) of newts concerned.

### **5.2.3. EPS: Otters (*Lutra lutra*)**

Annex 3 provides details of the legislation and licensing provisions concerning otters. If otters are likely to be affected by the proposed development, full details will need to be provided of all the mitigation that will be implemented to maintain the favourable conservation status of the population(s) of otters concerned. Guidance on surveying methodologies is provided in *Otters: Guidelines for Developers (NRW 2009)*, which is enclosed.

### **5.2.4. Badgers (*Meles meles*)**

The legal protection and relevant licensing provisions for badgers is explained in Annex 4.

We recommend that surveys are carried out to establish the presence of badger setts within the site and within the vicinity of the site. If the legal protection afforded to badgers is likely to be compromised by the proposed development, full details of all the mitigation that will be implemented to minimise impacts should be provided in the Environmental Statement. A licence from the Countryside Council for Wales will be required. Further guidance is provided in *Badgers: A Guide for Developers (NRW 2005)*, which is enclosed.

### **5.2.5. Water Voles (*Arvicola terrestris*)**

Water voles are given full protection under Part I Section 9 of the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally or recklessly kill, injure or take this animal, damage, destroy or obstruct access to any place that it uses for shelter or protection or disturb it while it is occupying such a place. A licence is generally required before carrying out any activity which could lead to any of the above. Their legal protection is explained more fully in Annex 5.

We recommend that surveys are carried out in appropriate conditions to ascertain the extent to which water voles use the site and are likely to be affected by the proposed development. If they are likely to be affected by the proposals, the Environmental Statement should detail all of the mitigation measures that will be implemented.

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### 5.2.6. Reptiles

Common lizard (*Lacerta vivipara*), slow worm (*Anguis fragilis*), adder (*Vipera berus*) and grass snake (*Natrix natrix*) are frequently encountered in Wales. Legal protection under the Wildlife and Countryside Act 1981 makes it an offence to intentionally kill, injure or take these species.

Where reptiles may be present, surveys should be conducted at the appropriate time of year (April-June and September) and in appropriate conditions to establish the extent to which reptiles may be present within the site. If reptiles are likely to be affected by the proposals, the Environmental Statement should include comprehensive details of all the mitigation that will be put into place to safeguard the population(s) concerned.

### 5.2.7. Species listed under S.42 of the Natural Environment and Rural Communities (NERC) Act 2006

We recommend that the developer consults the PCC Ecologist on the scope of the work to ensure that regional and local biodiversity issues are adequately considered, particularly those habitats and species listed in the Powys Local Biodiversity Action Plan. In addition, other species listed under Section 42 of the Natural Environment and Rural Communities (NERC) Act (2006) are important for the conservation of biological diversity in Wales, and it is expected that these species would also be considered within the EIA. Information about habitats and species listed under S.42 of the NERC Act may be found on the Wales Biodiversity Partnership website ([www.biodiversitywales.org.uk](http://www.biodiversitywales.org.uk)).

Additional survey work may be required in this respect. If any such species are likely to be affected by the proposals, the Environmental Statement should detail all of the measures that will be put in place to conserve and enhance the populations of the species concerned.

### 5.3. Ornithology

The EIA should consider the potential impacts of the proposals on birds, in particular those that are:

- Legally protected through the provisions of Section 1 of the Wildlife and Countryside Act 1981 (including those listed on Schedule 1 of the Act);
- Listed on the relevant local Biodiversity Action Plan(s) - Biodiversity Action Plan for Neath Port Talbot 2008-2012
- Listed as priority species for Wales under Section 42 of the Natural Environment and Rural Communities Act 2006; and
- Listed on the Welsh red and amber lists of birds of conservation concern.

Desk study information and an initial walkover survey should be used to assess the potential of the site and surrounding land to support birds encompassed by the above. This should also guide more specific survey work.

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Ornithological surveys should follow the guidance set out in:

- *Survey Methods For Use In Assessing The Impacts of Onshore Windfarms on Bird Communities* (Scottish Natural Heritage, 2005).
- *Assessing the effects of onshore wind farms on birds* (Natural England Technical Information Note TIN069)

Surveys should be scoped to ensure relevance to the site and its circumstances, and follow best practice for the surveys that are deemed necessary. Any variation in survey methodology and the level of effort from that recommended in the guidance should be justified and discussed and agreed with NRW in advance of surveys being undertaken.

An assessment of the wind farm's potential effect on birds should thoroughly consider each of the three potential risks for each bird species that uses the site:

- Displacement through indirect loss of habitat if birds avoid the windfarm area and surrounding land due to turbine operation and maintenance/visitor disturbance;
- Death through collision or interaction with turbine blades;
- Direct or indirect habitat degradation or loss through the construction of windfarm infrastructure or land use change that may happen as a result of improved access to the site with the construction of new tracks.

In addition to collecting your own data, we advise that data should be gathered from other data sources. Additionally, local raptor groups should also be consulted for any data that they may hold.

More detailed survey, using vantage point watches as appropriate, should include:

- Breeding bird survey using point count methodology, if the proposed development will involve clear felling of any areas of forestry;
- Vantage point surveys to identify bird movement across the site throughout the year

#### **5.4. Site Hydrology and Hydrogeology**

The EIA will need to assess how the proposed construction and engineering works will impact on any streams and wetland habitats present on and off the site. We suggest that, if appropriate, a detailed survey of site hydrology is undertaken. This will indicate areas of likely habitat conservation value; give a steer on which areas should be avoided and also help to target potential enhancements. It should be the aim of the proposals to ensure no net change in run-off rates but in addition the EIA should identify and address:

- What are the potential impacts on any of the streams during construction and how they will be avoided?

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- What changes to the run-off regime might occur and how any adverse effects on the streams or surrounding habitats will be avoided (using a matting/web material etc. for road construction).
- What physical changes to the site drainage (due to construction of turbine bases, infrastructure, roads etc.) are likely and how any adverse effects on the water balance, both in the streams in the wetland habitats, will be prevented. This will need to consider winter and summer conditions and consider any effects in relation to peat.

## 5.5. Peat

It is noted that the scoping report identified some areas of wet heath during the Phase 1 survey. While it is unlikely that the site supports substantial areas of deep peat, NRW regards the potential damage to peatland habitats and carbon stores to be a major environmental issue and the EIA should therefore consider the impact on peat if it is present. Peat depth maps showing the extent and depth of peat deposits would need to be produced so they can be overlaid on to Phase 1 habitat survey maps.

We advise the developer to consult NRW's Guidance Note '*Assessing the impact of wind farm developments on peatlands in Wales*' (January 2010) for information and guidance on assessing the impacts of wind farms on peat and peatland habitats. This sets out clearly the importance of the peat resource in Wales and the extent and detail of work expected in EIA for sites where peat is present.

In line with the section 42 (NERC Act 2006) priority Species and Habitats of conservation concern in Wales, we would expect that disturbance and/or destruction of peat would be avoided as far as possible, and where it was not possible, such impacts would be minimised. Pursuant to TAN 8 we would also recommend that opportunities to halt the deterioration of existing degraded peat and/or to restore active peat forming vegetation are exploited as part of a strategic environmental management plan for the site.

## 5.6. Statutory Nature Conservation Sites

The EIA should consider the likely impacts on statutory nature conservation sites (SSSI, SPA, SAC) within and in the vicinity of the proposed development.

Specific information about these sites including citations explaining the reasons for their notification, maps showing the extent of the notified site, and their conservation objectives are available from NRW's website ([www.NRW.gov.uk](http://www.NRW.gov.uk)). These will be needed in order to consider and assess the impacts of the scheme, and provide the determining authority with the relevant information so that they may assess the proposals in accordance with the requirements of Regulation 61 of the Conservation of Habitats and Species Regulations 2010.

General information about European sites is available on the Joint Nature Conservation Committee's (JNCC) website ([www.jncc.gov.uk](http://www.jncc.gov.uk)). Some details are also given regarding the notified features of sites. However, you should be aware that this information may not be accurate and therefore we would

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advise against relying on it. We would advise reliance on the original legal documentation for the notification of such sites. NRW can provide this information on request.

### 5.6.1. Sites of Special Scientific Interest (SSSIs)

Digital boundaries for statutory sites may be obtained from NRW's website ([www.NRW.gov.uk](http://www.NRW.gov.uk)).

Full information about each SSSI is available from NRW's website:

<http://www.NRW.gov.uk/interactive-maps/official-maps--docs-and-citati.aspx?lang=en>

- Citation – which detail the reasons why the site has been notified;
- List of Potential Damaging Operations – listing the operations that could potentially damage the site;
- Map – showing the extent of the notified site;
- Site Management Statement – setting out the management required to maintain the notified features of the site; and
- Favourable condition status information about the site.

Full details should be provided of the likely impacts of the proposals on the notified features of these sites and their significance, along with comprehensive information about the measures that will be put in place to, in priority order:

- i. avoid damage to SSSIs;
- ii. mitigate for any unavoidable damage to SSSIs; and
- iii. compensate for any unavoidable SSSI damage that cannot be mitigated for.

### 5.6.2. Non-statutory Nature Conservation Sites - Local and Regional Sites

The EIA should consider the potential effects of the proposed development on sites of local or regional nature conservation importance (e.g. Local Wildlife Sites). Full details about the location, extent and natural heritage interest of such sites may be obtained from the Local Authority Ecologist.

If non-statutory natural heritage sites are likely to be affected by the proposed development, the Environmental Statement should include all of the measures that will be implemented to ensure that there will be no overall loss of the local natural heritage resource.

### 5.7. Potential Mitigation and Enhancement Measures

With respect to all natural heritage interests that could be affected by the scheme (e.g. habitats, flora and fauna in and outside designated and non designated sites), landscape and geology, it is only possible at this stage to advise on general mitigation measures. We would welcome the opportunity

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to discuss this issue in greater detail as the scheme progresses. In order of priority, the scheme should seek to:

- i. avoid damage to ecological interests within and outside the proposed development boundary;
- ii. mitigate any acceptable damage that cannot be avoided; and
- iii. compensate for any acceptable residual damage that cannot be mitigated for.

The Environmental Statement should include a detailed description of all the committed to measures that will be implemented to avoid, mitigate and if necessary, compensate for any significant adverse effects on the environment. These measures should be relevant and proportionate to the nature and scale of the likely adverse impacts. Such measures could include ensuring that disposal of any excavated soil/rock is not stored or spread over sensitive habitats, the micro siting of turbines, moving location of access roads, and changing the timing of construction to avoid sensitive periods for protected species (e.g. breeding season).

Only measures that the developer firmly commits to should be included in the ES for the purpose of assessment. Such measures should take account of and combat cumulative effects and combined impacts and where possible mitigation and compensation proposals should be made that benefit more than one/multiple interest features.

With reference to Strategic Search Areas, TAN 8 states that:

- “there could be opportunities to enhance, extend or re-create habitats of wildlife and landscape interest. These opportunities should be grasped”.
- “With such extensive application sites there will very often be opportunities for developers to mitigate for any potential ecological damage and preferably enhance current wildlife habitats”

NRW seek site enhancements for biodiversity. Any such proposals within the Environmental Statement must be a statement of intent for measures that will be implemented. This should include broad statements/prescriptions on habitat enhancements for the restoration of habitats in poor/degraded condition and proposed enhancements to benefit protected and/or priority species.

#### **5.7.1. Monitoring and Surveillance, During and Post Construction**

We recommend the inclusion of details of a monitoring programme covering all the natural heritage interests affected by a scheme through construction, operational & decommissioning phases of the development.

Monitoring of the identified ecological features likely to be adversely affected must be linked to appropriate contingency plans and monitoring results should trigger the implementation of the relevant contingency measures identified in the various Environmental Management Plans (EMPs). Monitoring must be related to good quality recent and accurate baseline data and include controls. Monitoring should be started at an early stage in the project and be carried out over a sufficient

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length of time to demonstrate positive or negative trends. It may be necessary to amend construction procedures if the monitoring programmes identify adverse impacts linked to construction or post construction activities and NRW would wish to be consulted in such an event.

## **6. Highways and Transportation**

### **Site Access**

New highway access may be required as part of the development. These proposals may require road widening and hedge removal as well as other impacts. The EIA should consider the impact of these activities, which can be significant in visual and ecological terms and should provide cross sections of any proposed road widening and junction realignment.

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## ANNEX 2: EUROPEAN PROTECTED SPECIES - LEGISLATIVE PROTECTION

European Protected Species include:

- Great crested newt (*Triturus cristatus*)
- Common otter (*Lutra lutra*)
- all British bats
- Dormouse (*Muscardinus avellanarius*)

All European Protected Species and the places they use to rest and breed are legally protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 – the Habitats Regulations. The Habitats Regulations transpose the requirements of the Habitats Directive (Council Directive 92/43/EEC) into UK law.

Under Regulation 41 of the Habitats Regulations: -

A person commits an offence if he or she:

- deliberately captures, injures or kills any wild animal of a European protected species;
- deliberately disturbs animals of any such species;
- deliberately takes or destroys the eggs of such an animal; or
- damages or destroys a breeding site or resting place of such an animal.

Disturbance of animals includes in particular any disturbance which is likely:

To impair their ability

- to survive, breed or reproduce, or to rear or nurture their young, or,
- (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- (b) to significantly affect the local distribution or abundance of the species to which they belong.

Under S.9(4)(b) and (c) the Wildlife and Countryside Act 1981 (as amended):-

A person commits an offence if he/she intentionally or recklessly

- disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- obstructs access to any such structure or place.

Where the legal protection afforded European protected species under the Habitats Regulations is likely to be compromised by a proposed development, the development may only proceed under a licence issued by the National Assembly for Wales (NAW). Under Regulation 53(2) of the Habitats Regulations, NAW may issue licences for the purposes of:

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'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment.'

Furthermore, a licence can only be issued by NAW if the following two conditions are also met:

That there is 'no satisfactory alternative' (Regulation 53(9)(a)), and that: 'the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).

In addition, Regulation 9(5) of the Habitats Regulations confirms that all competent authorities, in exercising any of their functions, must have regard to the provisions of the Habitats Directive so far they may be affected by the exercise of those functions.

The principle consideration of any scheme that affects a European Protected Species is whether the plan or project is detrimental to the "Favourable Conservation Status" of the affected species. The Habitats Directive (Article 1 (i)) defines Favourable Conservation Status as:

- *"the sum of the influences acting on the species concerned that may affect the long term distribution and abundance of its population within the territory" and "favourable" when:*
- *"the population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitats,*
- *"the range of the species is neither being reduced nor is likely to be reduced for the foreseeable future", and*
- *"there is, or will probably continue to be, a sufficiently large habitat to maintain its population on a long term basis".*

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### ANNEX 3: LEGISLATION CONCERNING BADGERS

Badgers and their setts are protected under the Protection of Badgers Act 1992. Legal protection makes it an offence to:

- wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so;
- intentionally or recklessly interfere with a sett.

Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. If the proposed development is likely to compromise the legal protection afforded badgers, a licence will be required from the Countryside Council for Wales.

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## ANNEX 4: LEGISLATION CONCERNING WATER VOLES

Water voles are now fully protected the Wildlife and Countryside Act 1981 (as amended). Under this legislation it is illegal to:

- Intentionally kill, injure or take any wild water vole (Section 9(1));
- Possess or control any live or dead water vole or any part of, or anything derived from, such an animal (Section 9(2))
- Intentionally or recklessly damage or destroy any structure or place which any wild water vole uses for shelter or protection (Section 9(4)(a));
- Intentionally or recklessly disturb any such animal while it is occupying a structure or place which it uses for that purpose (Section 9(4)(b));
- Intentionally or recklessly obstruct access to any structure or place which any wild water vole uses for shelter or protection (Section 9 (4)(c)).

There is no licensing provision for 'development'. The Wildlife and Countryside Act provides a defence against the above offences where the action is the incidental result of an otherwise lawful operation and could not have reasonably been avoided (Section 10(3)(c)). All reasonable efforts must be made to avoid committing an offence.

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