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To: [Wylfa Newydd](#)
Cc: ["Chris Wynne - North Wales Wildlife Trust"](#)
Subject: Deadline 4 Submissions - North Wales Wildlife Trust and request to attend SSSI Compensation Site Visits
Date: 17 January 2019 12:01:03
Attachments: [Post-hearing note eNGO - Biodiversity FINAL.pdf](#)
[NWWT and eNGO oral case FINAL.pdf](#)

Kay et al

Please find attached NWWT submission following the Issue Specific Hearings last week (7 – 11th January 2019).

This includes: -
Post-hearing note eNGO – Biodiversity
NWWT and eNGO oral case

Submissions from National Trust (including these two items) will also be made today.

I would also like to request by way of this email, that **NWWT would wish to attend the site visits to the SSSI Compensation Sites (Cors Gwawr and Cae Canol-dydd), if the Inspectors are to make an accompanied visit.** The initial request for the site visit was made by NRW [REP2-328].

If my request is accepted and the DCO process is to continue please can you keep me informed of the dates and times of this visit.

Regards Teresa

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Post Hearing Notes at the request of the Examining Authority

Wylfa Newydd Development Consent Order - EN010007

North Wales Wildlife Trust id 20011639

National Trust id 20010995

Royal Society for the Protection of Birds id 20011586

Introduction

This Post-hearing note has been prepared by Ms Hughes, in collaboration with the other eNGOs (environmental non-governmental organisations – North Wales Wildlife Trust, National Trust and RSPB – local & UK). It should be read in conjunction with the written record of the eNGOs' and NWWT's (North Wales Wildlife Trusts) oral presentations at the Issue Specific Hearings (ISH) on Biodiversity, but represents the views of the individual parties (National Trust, RSPB and NWWT) where identified in the oral case record.

Much of the information presented by way of rebuttal of the eNGOs' WR [Horizon REP3-026 rebuttal of REP2-348] and NWWT WR [Horizon REP3-028] sought simply to re-justify Horizon's position as supplied in the DCO application. Following review of these documents, the eNGOs feel that they have provided sufficient clarification of their position and/or any necessary correction at the oral examination, such that there is little merit in addressing any remaining matters point-by-point, and the eNGOs are content to let these WRs stand.

It has become abundantly clear during the proceedings of the 4 days of the ISH that the eNGOs attended, that unfortunately a significant amounts of new information are required from Horizon to update and/or provide more detail on a vast array of topics. Therefore, this Post-hearing note seeks to summarise the eNGOs' conclusions following the ISH, and set out what the eNGOs feel could helpfully be presented by Horizon during the relevant updates in order to progress outstanding concerns.

ExA 1 Response in a post-hearing note to the D3 evidence from HNP

Draft Section 106

The views of the eNGOs are presented in a separate paper prepared by the National Trust.

Cemlyn Nature Reserve

The eNGOs agree with the conclusions of NRW that the Anglesey Terns SPA should be taken to HRA stages 3 & 4 and a compensation package should be submitted as soon as possible. The eNGOs agree with NRW on Esgair Gemlyn that it has not been demonstrated, beyond reasonable scientific doubt, that there will be no adverse effect on integrity (AEOI).

In relation to the mitigation elements of the scheme: -

Anglesey Terns SPA This is subject to a separate ExA question in this paper.

Esgair Gemlyn Presented in Professor Kenneth Pye's Post-hearing report, which in summary provides: -

- Information that he considers necessary to fully and adequately assess the risk to the shingle ridge.
- His Annex 1 and Annex 2 provide details of what he considers may be included in a monitoring strategy
- The Annex 1 also provides a summary of the beneficial re-use of dredged materials [REP2-348 ∞ 5.24 – 5.34]

Mound E drainage The ExA asked for information on what would might be needed to progress resolution of concerns on this matter. These are in summary: -

- Detail of how the drainage system will work: - drawings showing by-pass fluming system, hydraulic calculations of its capability and capacity along with emergency operating procedures
- Of particular importance is reconsideration of the location of the silt busters at the road junction on the north-western corner of Mound E, which is the gateway to Cemlyn Nature Reserve for visitors.
- No reworking of Mound E at later phases of the construction timetable, with a once only restoration scheme implemented when the Mound is first formed.
- Submission and understanding of the phasing of LHMS (Landscape Habitat Management Strategy) restoration. This also represents a wider eNGO point.
- Detail of flood risk on the Nant Cemlyn and Afon Cafnan, which has not been addressed during the licence applications. This has correlation with the design of the drainage scheme both in construction and operation. The National Trust and NWWT wish to be kept informed of progress on this matter and be consulted on any additional information that may be submitted to the consenting body.

Recreation & Tourism There seems to be little clarity as yet on this issue and Horizon still appear to adopt a piecemeal approach, but key points: -

- Workforce Management Strategy – not enough movement yet and unclear how it will operate or be delivered.
- Delivery mechanism needs to be identified for 'sensitive sites warden', either s.106 or a Requirement.
- Tern Warden the significant shortfall in s.106 funding allocations should be addressed.
- Visitor Centre – won't solve all the identified problems and ExA state little weight can be placed on this commitment due to needing permission outside the DCO. Horizon have indicated that more detail will be forthcoming on this element later in the DCO Examination and clarity would be welcomed.
- Temporary Viewing Platform – given the above on the Visitor Centre, if it cannot be given any weight, it is considered that a significant upgrade/thought to the temporary viewing area would be necessary. Ultimately, this should demonstrate that the DCO can overcome safe access and parking capacity not just at the viewing platform, but more widely across the WNDA and its immediate environs (i.e. National Trust land eastern car park and Trwyn Pencarreg, Wylfa Head and Coastal Path).

Predator and undesirable species monitoring and management protocol The stance presented by Horizon at D3 [REP3-026 ∞ 2.4] reiterates the points made in the DCO application. This matter was not discussed in ISHs, but the eNGO WR [REP2-348 ∞ 3.209] is that a predator/undesirable risk management strategy should be secured via a Requirement in addition to opportunities to secure predator protection measures as Cemlyn Nature Reserve via the Environment Funds.

Marine Mitigation for loss of seabed

This matter was provided on behalf of National Trust and NWWT by Dr David Parker. The additional information at D4 is awaited with interest. Key points: -

- Measures should be sought to demonstrate protection of the National Trust owned coastline in Porth-y-Pistyll, particularly from the removal of the temporary causeway.
- The new information should seek to compensate for all the additionally D3 identified habitat losses.

Tre'r Gof SSSI - TWA (Temporary Workers Accommodation)

NWWT's position objecting to the current TWA proposal, has not altered and the RSPB's concerns relating to chough have not yet been addressed.

Alternative locations of the TWA There would be considerable merit for investigation of alternatives for TWA which could be pursued: -

- It appears that IACC have similar problems with the TWA, its scale and location. However, discussions on the IACC alternative approach for a smaller campus to north of current TWA on-site boundary seems to have stalled. Consideration of an amendment of the DCO application – dependant on detail – may provide a solution to this matter in terms of biodiversity.
- NWWT recognise that the Land & Lakes scheme is out with the DCO, but this was not the case until PAC3 when it was removed. The L&L scheme has significant merits in NWWT’s view and any adjustment to the DCO application via an amendment to the scheme would be a solution to this matter in terms of biodiversity.

Chough the RSPB’s concerns are still extant, which can be summarised from their response to the ExA questions [REP2-358 ∞ ExQ1 Q2.0.21]: -

“To be considered “sufficient”, chough habitat provision needs to:

- *be of sufficient **quality***
- *be of sufficient **extent** and*
- *have **continuity** through the construction phase”*

It is our view (the RSPB and NWWT) that the D3 representations and the ISH leave critical features, which could achieve this, unresolved: -

- There is a need to understand and secure the phasing of the LHMS restoration in relation to seeding of Mound A.
- There is a need for clear separation of contributions to secure the protection of the chough network outside of the Environmental Enhancement Fund in the s.106, as the delivery of these measures are necessary as mitigation to protect this Schedule 1 and Annex 1 species, and their funding should therefore be identified as a separate costed item.

Drainage schemes around Tre'r Gof SSSI – it is recognised that a new drainage package is to come forward at D5.

The D5 drainage proposals should demonstrate the feasibility of the proposals at the TWA, which NWWT feel are novel, untested and damaging in their own right. This relates both to the operation of the TWA and its restoration (restoration not discussed at ISHs).

SSSI compensation sites – NWWT agreed with NRW’s points on this matter, the summary points from NWWT perspective are: -

- It is recognised that 2 full seasons hydrological assessment will be necessary to understand the extent and likely quality of habitats that can be created.
- Dependant on the results of hydrological assessment there may be a need for additional sites - from the original long list – to be reconsidered.
- Clarification of the details of long-term funding for management and the Bond to be secured on the work.
- Details of topsoil stripping, management and/or disposal on or off site.

Recreation and Tourism see the eNGO section above.

Air Quality

Immediately after the ISH NWWT approached Stephen Byrne (Horizon) and acknowledged their ‘bad maths’. Mr Byrne took NWWT to Horizon’s analysis in REP3-052. Table 2-12 shows a 13% change in nitrogen deposition at Year 2. Additionally, there is a 2% change in nitrogen at Year 5 (Table 2-17).

NWWT accept these figures and recognise the reduction in deposition rates over the DCO application figures. The introduction of the new D3 measures to control construction and marine vessel emissions are welcomed.

However, the points discussed at the ISH about the sensitivity of critical elements of the Trwyn Pencarreg and Cae Gwyn habitats (eg lichen-rich coastal heath and mire habitats respectively – APIS figures) to very small changes in nitrogen deposition still stand.

Additional improvements in air quality could be achieved by adopting electric hook-ups for marine vessels moored in the harbour [REP2-349 ∞ Chapter 4, section 7 item 6].

ExA 2 Post-hearing note on tern energetic budgets in response to Horizon REP3-026 ∞ 2.2.5 (directed initially to the RSPB)

In response to the ExA question at the ISH Ms Hughes, on behalf of the eNGOs, indicated that their position had not changed by the addition of the calculations provided by Horizon at D3 [REP3-026 ∞ 2.2.5]. To assist the ExA further on this matter the following pulls together the threads of the eNGO case: -

- The most salient feature of the energy budget debate is Horizon's acknowledgement as stated in the sHRA [eNGO REP2-348 ∞ 3.74 and 3.97] that construction disturbance and flight deviations are likely within the Zone of Influence (ZOI) resulting from noise (and visual¹) disturbance and that this will result in additive energy expenditure. The eNGOs' WR concludes that this objectively increases energy requirements over and above 'normal' breeding conditions.
- The remainder of the discussion between both parties is based in the interpretation of the baseline data and available scientific literature. In the eNGOs' view; this is the need for an energetically efficient provisioning strategy for terns and the observed extent/degree of deviation on the commuting routes (particularly vertically) [REP2-348 ∞ 3.90, 3.97 and 3.115 – 3.122].
- This is contrasted with Horizon's position and the "suggested" energetic costs that may occur at Cemlyn extrapolated from deviations of avoidance in windfarm studies and their relevance to this proposal [REP3-026 ∞ 2.2.5].
- The crux of the issue here relates to the significant percentage - 75%² - of birds **commuting** through the ZOI (zone of influence) recorded by Horizon in their baseline studies, not as suggested by Horizon the level of foraging within the WNDA ZOI [REP3-026 ∞ 2.2.5 - rebuttal of eNGO WR], which is essentially a red herring in this discussion.
- The acknowledged cumulative effects on energy expenditure during commuting trips will combine with other factors relating to disturbance from construction (e.g. ExA physiological and psychological questions at ISH) and 'normal' site pressures, potentially causing adverse effects on the breeding success of the terns³. From the ISH and D3 it is evident that neither party has been able to accurately quantify this with any degree of scientific certainty or clarity, and therefore it is the eNGOs' view that the Precautionary Principle⁴ must apply.

ExA 3 Post-hearing update on grave concerns in relation to the amber/red warning system methodology for Anglesey Terns

This is in response to the D3 Horizon Technical [Note REP3-048](#). The eNGOs maintain the same conclusion as set out in their WR [REP2-348 summary 1.12 – 1.17].

The D3 approach does not represent effective risk management and is not proportionate to the level of risk. Elements of the methodology are not (Best Available technology/technique) BAT and many aspects of it are novel and untested in the industry. All elements are contrary to EU guidance on the Precautionary Principle and the eNGOs still believe that the proposed mitigation is inoperable.

The eNGOs' position is that the adjustments made at D3 add little to what was tabled previously. They do not go far enough to protect the terns either at the breeding colony or as Sandwich terns commute to and from the colony, passing over the new harbour construction/operational area.

Noise thresholds It was generally agreed that the proposed thresholds were in right area. However, there is still no definition of what constitutes the breeding colony ambient noise levels. As indicated in the eNGO WR [REP2-348 ∞ 3.58], the proposed approach could result

¹ Visual disturbance was not specifically addressed at the ISH, but is of relevance to the debate.

² The eNGO WR [REP2 -348 ∞ 3.90] reporting sHRA [APP-05 figs 10-8 & 10-9]

³ Breeding success evaluated by number of breeding pairs or productivity in chick rearing

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l32042> a copy of the EU summary is attached as Annex 2 to the eNGO oral case report

in blast sizes used that are at a level where the breeding colony is already in a distressed/disturbed state, as Horizon acknowledge that the birds are noisiest in response to predators or threat species/events. This is not considered to be precautionary risk management.

4 week establishment period This has not been adjusted, which is not acceptable to the eNGOs. This is not BAT; which indicates that the bird breeding season is 1st March to 31st August (British Standard BS42020:2013 - model conditions).

Dates for the 4 week establishment period There was confusion in the ISH from Horizon (Sian John on behalf of Horizon) who appeared to indicate that 'NWWT can have whatever dates they want earlier in season'. Horizon's approach however, did not appear to indicate that the length of the establishment period would be extended to encompass the establishment period of all tern species (Sandwich, common, Arctic and roseate) for which the SPA is designated. Nor did Horizon make any comment on the collated tern establishment data of over 20 years, as presented in the eNGOs' WR [REP2-348 ∞ Fig. 1 and eNGO oral case]. The eNGOs' data provides an evidential basis for the vulnerable establishment period, and could be used to provide a more accurate definition of the establishment period for the breeding colony against its conservation objectives for each tern species. In this respect, the risk management has not responded or reviewed the most relevant scientific understanding (see Precautionary Principle - risk management 5th bullet point).

Responsive monitoring What has been presented [REP3-048] does not overcome the eNGOs' concerns. Responsive monitoring remains a novel technique with no track record of operation elsewhere. It is not considered by the eNGOs to represent effective risk management as it only responds once impacts have occurred (see Precautionary Principle eNGO oral case).

Furthermore, it is very concerning that Horizon (Sian John) feels that works would only need to stop for short periods (i.e. "*minutes not hours-and-hours*"). This places no recognition on the fact that disturbance impacts on the terns act cumulatively/synergistically over a period of time throughout the season, which could lead to either decline in productivity or colony collapse.

Other normal disturbance factors would also need to be well controlled (i.e. predation and visitors) as the construction noise disturbance will add to these.

From the ISH round table discussions there is no further clarity or confidence on how this part of the system will operate and the discussion on the 'walk through' of Eco Clerk of Works was very unclear from Horizon. Crucially, this matter relates to how does "*the big red button get pushed*" by whom and when. Specific issues still remaining: -

- Mechanism to identify the machinery actually responsible (not just the loudest one)
- Lines of communication within construction site
- Position of EcoCoW in corporate/contract hierarchy
- Authority to instigate shut down
- Conflict with H&S of machine operation
- Responsiveness of the system (ie how quickly can it be implemented)
- Monitoring and oversight by regulators (IACC/NRW)

References

BS42020:2013 'British Standard BS42020:2013 Biodiversity – Code of Practice for Planning and Development', BSI Standards Publication, August 2013

eNGO & NWWT presentation of Oral Case by Teresa Hughes (Biodiversity Planning Consultant) Wylfa Newydd Nuclear Power Station – DCO (EN010007)

North Wales Wildlife Trust - 20011639

National Trust - 20010995

The Royal Society for the Protection of Birds - 20011586

Introduction to the eNGO consortium

On each day when Teresa Hughes (Biodiversity Planning consultant) presented an oral case she introduced herself and the 3 hats that she was wearing in the Issue Specific Hearings.

The environmental NGOs (eNGOs) of North Wales Wildlife Trust (NWWT), National Trust (NT) and the Royal Society for the Protection of Birds (RSPB) came together more formally in early 2016 and submitted their first joint eNGO note to Horizon in May 2016 as part of the public consultation process.

The Written Representation (WR) submitted for Cemlyn Nature Reserve by the eNGOs [REP2-348 NWWT, REP2-318 National Trust and REP2-360 the RSPB] is a truly collaborative piece of work, which whilst written and presented by Ms Hughes, has been peer reviewed at a local and national level (UK – the RSPB and Wales – NWWT and NT) by specialist scientists, HRA advisors and legal personnel.

As in the ISH this written statement of the oral case will indicate which parties are being represented in an introductory sentence for each agenda item.

Day 1 First Issue Specific Hearing – Socio-economic, 7th January 2019

Agenda item 3d – Accommodation

NWWT attended this session on their own behalf and did not have a seat at the Hearing Table. Comments were delivered from the floor on two occasions: -

1. In response to comments from Mr Humphries (Horizon) regarding the policy position: - NWWT pointed to their evidence [REP2-349 ∞3.20 et seq.] in particular NWWT read from the WR [∞ 3.21], which quotes the EN-1 National Planning Statement (2011, paras 5.3.7, 5.3.8 and 5.3.11). These paragraphs indicate the need to consider reasonable alternatives and the avoidance of adverse impacts to SSSIs, either individually or in combination.

NWWT do not agree with the arguments presented by Horizon in relation to their interpretation of the NPS EN-6 policy and feel that this approach is contrary to The Well Being of Future Generations Act (2015). In addition, the recently published Planning Policy Wales 10th ed (December 2018), re-emphasises the importance of a Resilient Wales at paragraph 1.2 of the new guidance.

2. NWWT approached the table to provide an overview of their position: - Following the Deadline 3 representations and the ISH, NWWT have not materially changed their view as stated in their representation [REP2-349 ∞ 1.6] maintaining the objection to the location of the TWA (Temporary Workers Accommodation) due to its adverse impacts on the SSSI and biodiversity hotspot. It was not the intention to address biodiversity issues in this oral representation as this was to be covered on Thursday/Friday ISH.

NWWT do not wish to unduly emphasise one particular location over any other. However, we would point to the Land & Lakes (L&L) scheme as it provides an indication of what a robust approach can achieve. NWWT agree with IACC (Isle of Anglesey

County Council) that the L&L scheme benefits from an appropriate planning permission. NWWT responded to the original L&L application and were fully involved in the various consultations. NWWT believe that the biodiversity matters were fully resolved during determination of the TCPA and that the securing of the L&L Section 106 [REP-247] provides not only for a housing legacy, but also an environmental legacy (Visitor Centre and nature reserve). The view of NWWT's ecological planning advisor has been endorsed by the CEO of NWWT.

The TWA does not have these benefits and will try to recreate complex habitats on a virgin landform.

Agenda Item 6c - Recreation & Tourism

Ms Hughes presented her oral case from the floor of the ISH. NWWT (also representing the views of National Trust) pointed to their evidence [REP2-348 ∞ 3.146 et seq.] and the importance of wildlife tourism and recreation to this part of Anglesey, particularly Cemlyn Nature Reserve.

NWWT pointed to IACC's Local Impact Report (LIR) [REP2-065] and its Annex [REP2-110 section 6.1], which specifically identifies Cemlyn Nature Reserve as a "jewel in the crown" of the island's wildlife visitor attractions and that this section of IACC's LIR provides figures of visitor demographics and spend in this sector in particular.

NWWT/National Trust following the submission of additional information and the ISH indicates that their opinion has not changed on this matter and stays the same as at D2 due to the lack of clarity on 4 items: -

The temporary viewing platform this will only become available around 6 months and is contingent on safe access and parking capacity – there appears to be no change in Horizon's position since the DCO submission. This approach takes no account of any of the existing arrangements in the area (wider WNDA) and whether these have safe access or capacity.

The Visitor Centre needs to seek additional permission outside the DCO, although Horizon indicated orally that this may now come forward earlier in construction and may obviate the need for the temporary facility¹.

Workforce Management Strategy (WMS) NWWT noted the change to the WMS [REP3-026 ∞ 2.3.1], and that this would be published at D4. NWWT whilst indicating that this may be positive, still have concerns regarding the funding for additional wardening of 'sensitive sites' as this does not currently appear to be identified in Schedule 11 of the draft s.106 [REP3-042] or the draft DCO Requirements.

Tern Warden NWWT's concerns regarding the WMS are reinforced by Horizon's commitment in Item 3 of Schedule 11 of the draft s.106 [REP3-042], which will result in NWWT having to foot the bill for more than 50% of the proposed new Tern Warden post. This is unacceptable, see D4 submission by eNGO on the Section 106 and costings.

During the ISH roundtable discussion NWWT indicated having listened to the roundtable discussions there was a mounting concern regarding the unquantified impacts that loss/reduction in size of the breeding colony of birds may have on visitor faithfulness/loyalty² to the Cemlyn Nature Reserve and the wider offer and/or brand identity of both NWWT and the National Trust. It should be noted, that the wider tourism case has not been presented by the National Trust or NWWT.

¹ On Day 4 ISH – Biodiversity the ExA asked Horizon what weight should be placed on the Visitor Centre commitment, given that its delivery relied on a permission outside the DCO submission. It was concluded that the weight was limited.

² Visitor loyalty to Anglesey as a whole was presented by IACC

Day 3 – Second Issue Specific Hearing draft DCO & Section 106, 9th January 2019

Due to a family bereavement over the Christmas holiday period, NWWT were unable to attend this ISH. National Trust attended and they have issued a joint statement on the draft s.106 at Deadline 4, which NWWT and the RSPB endorse.

Day 4 – First Issue Specific Hearing on Biodiversity, 10th January 2018

Habitats Regulation Assessment

Ms Hughes indicated that for this part of the agenda she would be representing the views of all 3 eNGOs (NWWT, National Trust and the RSPB).

Agenda Item 3a – Seabird survey data

The eNGOs confirmed that they agreed with NRW's view regarding the appropriateness of the gathering of seabird data, but that the issue remained in terms of its interpretation and evaluation.

The eNGOs indicated that their position was still the same following the review post D2 and D3 that: -

- Matters relating to the Anglesey Terns SPA have not been demonstrated by Horizon beyond reasonable scientific doubt.
- The eNGOs agree with NRW that they also are of the opinion that there will be an adverse effect on integrity (AEOI).
- The eNGOs agree with NRW that the matter should be taken to stage 3 and 4 of the Habitats Regulations Assessment.

The eNGOs pointed to the EU definition & guidance on the Precautionary Principle³ (PP), which is enshrined in the UK's Habitats Regulations (2017). This definition's stated purpose is: -

“Ensuring a higher level of environmental protection through preventative decision-taking in the case of risk.”

So far in the last 3 years and in the representations, most parties have concentrated on the first part of the 3 parts of the PP process, which is: -

- Scientific evaluation and degree of certainty of conclusions, on which there is still stated differences between the main parties (Horizon and NRW and the eNGOs).

However, the next stages of PP evaluation are: -

- Evaluation of risk and more importantly the consequences of inaction. In the case of the Anglesey Terns SPA breeding colony the risk of inaction (or inappropriate action) could be sequential over a number of years of colony collapse/decline in productivity, which may act either cumulatively or synergistically with other sources of disturbance. This could potentially ultimately lead to colony abandonment during construction. Any of these outcomes is of detriment to the wider populations of breeding terns in other SPAs, as well as failure to meet the conservation objectives of the Anglesey Terns SPA.
- The third part of the PP is the involvement of all parties in the development of precautionary measures. As landowner (National Trust), tenant (NWWT) and recognised UK authority on bird ecology (the RSPB) it is the eNGOs' view that they have considerable local knowledge and expertise and should be involved in all stages of the development of precautionary measures.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I32042> a copy of the EU summary attached as Annex to this oral case submission.

The EU guidance document goes on to consider the key principles of risk management which include: -

- Proportionality of measures in relation to the necessary level of protection.
- Consistency with measures taken elsewhere (i.e. use of industry standards or BAT - Best Available Technology).
- Benefits and costs of action vs inaction.

The eNGOs indicated that this is the manner in which they have approached their preparation for the ISH and suggested that the ExA may wish to consider these the tests of risk management in their determination of the appropriateness of Horizon's response to matters.

Agenda item 3b i – To explore impacts on interest features of Anglesey Terns SPA, including blasting effects on tern (species)

The ISH discussion was led through a number of questions by the ExA and the salient features of the ISH oral representation of the eNGOs is laid out below, but the Post-hearing note in response to the ExA specific requests is presented separately.

Blasting noise levels – The eNGOs' agreed with NRW assessment that the identified noise level (during establishment) was appropriate.

However, in relation to NRW's response to the changes in the terns' soundscape between the current and construction environment, the eNGO's sought to clarify the matter by pointing to their WR [REP2-348 ∞ 3.7 which refers directly to Horizon's own work APP-225]. It was explained that the difference between the current agricultural environment and the construction blasting soundscape is related not just to the volume of the sound, but more importantly to the rise time of that sound. Horizon's evidence on the comparison of similar rise time profiles is based on 3 events in 2017, which is too small a sample to base conclusions. Hence, the eNGOs do not agree with the criticism levelled at them on this matter by Horizon [REP3-026 ∞ 2.1.7].

4 week establishment period and its date range This is a key point for the eNGOs and they pointed to the WR [REP2-348 fig. 1 and text ∞3.43 - 3.53], which is a calendar of when the different tern species return to the SPA and when each might be considered to start its own 4 week establishment period. The date range is important not just for Sandwich tern but the other tern species of the SPA (common, Arctic and roseate) for which the SPA is designated.

The eNGOs were very concerned to hear the views at the ISH of Sian John (on behalf of Horizon) and explore this further in the eNGO Post-hearing note.

Fly-up responses and its applicability to mitigation red/amber approach On this matter the ExA directed specific questions to Horizon, NRW & the RSPB, in terms of physiological and psychological responses of the birds and their energy budgets.

In response to Horizon's assertions that the resilience of the colony was demonstrated by its recovery in 2018, the eNGOs indicated that this pattern has been observed during the previous colony collapse (2007) and elsewhere. It was added that the numbers of pairs and breeding successes in 2018 were recovering - not recovered - and that if perturbations of a similar kind, involving partial or total colony collapse, occurred over several breeding seasons throughout the 10 years construction of the scheme, the likelihood of total recovery would be eroded with each year the colony failed to thrive.

Energy budgets The eNGOs had noted the small amount of additional literature-based analysis presented by Horizon in their D3 response [REP3-026 ∞ 2.2.5] and indicated that it was similar to that presented in the DCO application and consequently it did not alter the eNGO WR's conclusions or the scientific uncertainty surrounding this matter. At the request of the ExA this is explored further in the Post-hearing Note.

The eNGOs' indicated that the D2 and D3 submissions and the roundtable discussion heard in this ISH agenda item had not altered their position and that there is grave concern regarding the lack of movement on the limited mitigation that has been proposed in Horizon's updated technical note on how they will meet committed noise levels [REP3-048]. This is addressed in full in the ExA requested Post-hearing note.

[Agenda item 3b ii – Cemlyn Bay SAC, including Mound E drainage](#)

Ms Hughes at this section of the ISH agenda represented the views of NWWT and the National Trust, as the RSPB has indicated that they will defer to their colleagues on this matter [REP2-348 ∞ 2.4].

Ms Hughes agreed with the statement made by NRW and acknowledgement that further information was to be presented by Horizon at D5 on drainage. Agreed with NRW that there was a need for additional baseline gathering over 2 full seasons (i.e. 2 years) in order to set realistic sediment thresholds of drainage discharges.

Ms Hughes went on to indicate that National Trust's and NWWT's view as presented in the WR [REP2-348, Chapter 4] was that the difference between favourable and unfavourable conservation status of the SAC was in-part reliant on the presence or absence of one of a very small number of specialist species, many of which both plants and animals, would be susceptible to the effects of sedimentation. Therefore, sufficient detail should be available to provide not just 'comfort' (in planning terms) but to demonstrate with confidence that this matter could be controlled effectively prior to a decision on the DCO and the report to the Secretary of State on the HRA (RIES).

Ms Hughes took the opportunity to indicate that although not an HRA issue, the cross-cutting nature of Mound E drainage with other topic areas including the WRs on landscape [REP2-317 ∞ 3.2.1- 3.2.12] and Landscape Habitat Management Strategy [REP2-319 ∞ 17 – 19], as Mound E falls within the AONB and the site's habitat restoration under the LHMS was a matter of difference of opinion with Horizon, especially relating to any need to rework Mound E and phasing of this work.

The ExA asked what detail the National Trust and NWWT would require to help alleviate concerns and this is presented in the Post-hearing note.

[Agenda item 3c – Coastal processes and geomorphological monitoring](#)

This oral presentation was provided on behalf of all 3 eNGOs by Professor Kenneth Pye who has provided a separate note.

Ms Hughes for the eNGOs provided a correction to Horizon's rebuttal [REP3-026 ∞ 2.5.7] by stating that **no** works have been undertaken by NWWT/National Trust to repair the shingle ridge. Both examples presented in the eNGO WR [REP2-348 ∞ 3.2.16] were positive actions to increase the area of bird breeding habitat on the SPA islands.

[Marine Works and the Marine Environment](#)

[Agenda item 4b iii – Cumulative effects in relation to benthic ecology](#)

This oral presentation was provided on behalf of National Trust and NWWT by Dr David Parker who whilst providing verbal context to the issues, will await the further information before making any full comments.

Terrestrial Ecology and Birds

In this part of the ISH Ms Hughes presented the NWWT case in relation to the matters discussed, except for chough, which also represents the RSPB's views.

Agenda item 5a i - Tre'r Gof SSSI baseline surveys

NWWT had no further comment to add than that presented by NRW.

NWWT noted the comments from NRW in relation to the TWA (Temporary Workers Accommodation), hydrology and its preference on the TWA's location.

NWWT reiterated the comments made at the ISH on socio-economic matters (see above) on the appropriateness of the location of the TWA. It additionally, pointed to IACC's Local Impact Report and WR [REP2-078 ∞ 1.4.13 and REP2-219 ∞ 14.0.1 – 14.0.8] relating to discussions between IACC and Horizon of alternative designs to the TWA within the current proposed footprint. The premise of this discussion could reduce the footprint of the proposal and concentrate the built development to the north western part of the TWA site near to the existing Magnox plant. NWWT indicated that they would be interested to follow discussions on this matter as it may provide a satisfactory alternative to the objections raised by NWWT in their WR.

NWWT emphasised that they agreed with the comments raised by IACC in relation to recreation and that they had presented their views on this matter in the first ISH on socio-economic roundtable discussions (see above).

Agenda item 5a ii - SSSI compensation sites

NWWT supported the views of NRW and had nothing to add. NWWT will consider the additional information due to be submitted by Horizon.

Agenda item 5a iii – Air Quality Cae Gwyn SSSI

NWWT acknowledged that they have not presented any WR on this matter, but agreed with NRW on the sensitivity of the SSSI to even small changes in air quality. They went on to indicate that the mitigation measures suggested in the NWWT WR [REP2-349 Chptr 4 ∞ 7 item 6] of berth-side electric hook-ups, would be appropriate in this case and would further reduce marine vessel emissions.

NWWT acknowledged and welcomed the introduction of Tier III marine vessels, but had been unaware of the land-based construction emission controls that Horizon had indicated will be adopted. These too were welcomed but they indicated that the point raised was still of relevance.

Agenda item 5a iv – Air Quality Trwyn Pencarreg (Wildlife Site)

NWWT acknowledged that this site does not receive the same degree of statutory protection as the SSSIs, however it was indicated that the lichen and moss rich coastal heath habitat has similar sensitivities to small changes in nitrogen deposition as the habitats on the SSSIs. NWWT presented the APIS (Air Pollution Information Service) figures 5 – 8 kgN/ha/year for lichen and moss assemblages respectively. They went on to point to figure D5-9 [APP-238] which shows very high increases of nitrogen albeit using the human receptor figures.

NWWT acknowledged that they used 'bad maths' to try to extrapolate to the relevant approach to habitats and also that they had not been aware of the D3 [REP3-052] update on the modelling of this aspect of the scheme.

Directly following the ISH NWWT approached Stephen Byrne (acting on behalf of Horizon). The Post-hearing note provides an update on NWWT's position, but in summary the point in relation to reducing marine vessel emissions are still relevant.

Agenda item 5a v – Reptiles and Bat roosts

NWWT indicated that they agreed with IACC in relation to the baseline and mitigation in respect of reptiles.

NWWT had considered the Horizon technical note on light spillage [REP3-047], but noted that this did not consider the light spillage from the MUGA onto the bat commuting corridor away from the compensatory bat barn, which has been demonstrated to be successful with 54 individuals of 4 species [REP3-027 ∞ 2.4.7].

NWWT will await the further information on light issues to be presented by Horizon.

Agenda item 5a vi – Chough

Due to this item being passed into the second ISH on Biodiversity, the RSPB had indicated that they could not attend, but Ms Hughes confirmed that the views expressed on this item had been discussed with the RSPB prior to them being presented. A jointly compiled response is presented in the Post-hearing note.

Ms Hughes indicated that the concerns of RSPB have not been addressed by the D3 submission [REP3-046], which the eNGOs received in draft form prior to D2 and discussed in the NWWT WR [REP2-349 summary ∞ 1.18 and the RSPB's response to the ExA questions [REP2-358 ∞ ExQ1 Q2.0.21].

Two points of additional concern were presented: -

- In response to NRW Horizon have indicated [REP3-035 ∞ 9.7.2] that “*phasing plans (detailed) are not necessary because all landscape is to be undertaken cohesively at completion of construction*”. This is particularly relevant to providing reinstated chough foraging as early as possible in the construction timeline. It was emphasised that this is also of relevance more widely and will be returned to by the eNGOs in the ISH to be held on landscape, particularly in relation to Mound E. Further NWWT made comparison with Mineral Planning Applications, which are often of a similar scale to the earthworks proposed in this DCO, where detailed phasing of landscape restoration would be required as a matter of course.
- Given the remaining concerns at D3 and the roundtable ISH that the contribution to the chough network outside the Wnda, as proposed in the s.106 [REP3-042 Schedule 11 item 1.3.3], should be identified separately within the Environmental Enhancement Fund with a specified ring-fenced budget. This item is not a nice to have, but is integral to chough mitigation. Later in the ISH, Ms Hughes also went on to demonstrate that there was a conflict between the chough mitigation and the measures necessary to improve Cemaes Bay Bathing Water Quality as discussed by NRW (Agenda Item 6 – Consents).

Day 5 – Second Issue Specific Hearing – Biodiversity

Coastal Change

Agenda item 3c i – Sediments

Ms Hughes noted and agreed with the comments from NRW (Dr Emmer Litt) that Cemlyn Lagoon SAC could benefit from the introduction of more shingle and took the opportunity to point to adaptive management options as presented in the eNGO WR [REP2-348 ∞ 5.24 – 5.34].

As the majority of matters under this agenda item were largely addressed by Professor Kenneth Pye these are discussed more fully in his Post-hearing note submitted on behalf of National Trust (NWWT and the RSPB defer to Professor Pye's expertise on this matter).

ANNEX 1 – EU Summary Note on the Precautionary Principle

‘Communication (COM92000) 1final) on the precautionary principle’

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l32042>

(last updated 30.11.2016)

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The precautionary principle

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The precautionary principle

SUMMARY OF:

[Communication \(COM\(2000\) 1final\) on the precautionary principle](#)

WHAT IS THE AIM OF THE COMMUNICATION?

- It explains the precautionary principle which enables a rapid response to be given in the face of a possible danger to human, animal or plant health, or to protect the environment.
- In particular, where scientific data do not permit a complete evaluation of the risk, recourse to this principle may, for example, be used to stop distribution or order withdrawal from the market of products likely to be hazardous.
- It establishes **common guidelines** on the application of the precautionary principle.

KEY POINTS

The [precautionary principle](#) is detailed in [Article 191 of the Treaty on the Functioning of the European Union](#). It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and also covers consumer policy, [European Union \(EU\) legislation concerning food](#) and human, animal and plant health.

The definition of the principle shall also have a positive impact at international level, so as to ensure an appropriate level of environmental and health protection in international negotiations. It has been recognised by various international agreements, notably in the Sanitary and Phytosanitary Agreement (SPS) concluded in the framework of the [World Trade Organisation \(WTO\)](#).

Recourse to the precautionary principle

According to the [European Commission](#) the precautionary principle may be invoked when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty.

Recourse to the principle belongs in the general framework of **risk analysis** (which, besides risk evaluation, includes risk management and risk communication), and more particularly in the context of **risk management** which corresponds to the decision-making phase.

The Commission stresses that the precautionary principle may only be invoked in the event of a potential risk and that it can never justify arbitrary decisions.

The precautionary principle may only be invoked when the **three preliminary conditions** are met:

- identification of potentially adverse effects;
- evaluation of the scientific data available;
- the extent of scientific uncertainty.

Precautionary measures

The authorities responsible for risk management may decide to act or not to act, depending on the level of risk. If the risk is high, several categories of measures can be adopted. This may involve proportionate legal acts, financing of research programmes, public information measures, etc.

Common guidelines

The precautionary principle shall be informed by **three specific principles**:

- the fullest possible scientific evaluation, the determination, as far as possible, of the degree of scientific uncertainty;
- a risk evaluation and an evaluation of the potential consequences of inaction;
- the participation of all interested parties in the study of precautionary measures, once the results of the scientific evaluation and/or the risk evaluation are available.

In addition, the **general principles** of risk management remain applicable when the precautionary principle is invoked. These are the following five principles:

- proportionality between the measures taken and the chosen level of protection;

- non-discrimination in application of the measures;
- consistency of the measures with similar measures already taken in similar situations or using similar approaches;
- examination of the benefits and costs of action or lack of action;
- review of the measures in the light of scientific developments.

The burden of proof

In most cases, European consumers and the associations which represent them must demonstrate the danger associated with a procedure or a product placed on the market, except for medicines, pesticides and food additives.

However, in the case of an action being taken under the precautionary principle, the producer, manufacturer or importer may be required to prove the absence of danger. This possibility must be examined on a case-by-case basis. It cannot be extended generally to all products and processes placed on the market.

BACKGROUND

For more information, see:

- [Press release](#) on the European Commission's website.

MAIN DOCUMENT

Communication from the Commission on the precautionary principle ([COM\(2000\) 1 final](#) of 2 February 2000)

last update 30.11.2016

[Top](#)