
NRW SUBMISSIONS FOR DEADLINE VI, 26TH MARCH 2015

INTRODUCTION

1. These are the Submissions of NRW in relation to the ISHs between 17th and 19th March 2015 in relation to:
 - a) **ISH Policy Matters**, in particular Items 3 (Relationship between EN1 and 3 and TAN 8) and 5 (compliance with Policy);
 - b) **ISH Landscape, Biodiversity and HRA**, in particular Items 2 (Landscape); 3 (Cultural heritage); 4 (Ecology); and 5 (Grid Connection).
 - c) **ISH draft DCO**.
2. References to Appendices of NRW in this submission are to: NRW; ISH; Item; followed by (a), (b) et seq... e.g. **Appendix-NRW-ISHP [for Policy]-1**. Within each Appendix, certain experts may have further internal appendices.
3. The NRW Submission for the ISH Draft DCO comprises a tracked change draft DCO with comments reflecting those made to the Ex A. NRW has applied tracked changes to the draft provided helpfully in Word by the Applicant on Friday 13th March 2015.
4. NRW reserves the right, as explained at the ISH of 19th March 2015, to provide and to update further documentation as relevant matters arise and also to respond to matters arising. NRW has sought to provide as much information as it can in respect of this Deadline to assist the ongoing orderly conduct of the 6 month Examination Hearing Period.

ISH POLICY MATTERS

5. NRW sets out in this section its submissions on the correct approach to policy and to the attribution of weight by the Ex A. NRW does not submit what weight should or should not be given to a given consideration because that is a matter for the Ex A and, in turn, the Secretary of State.
6. By section 5(1), Planning Act 2008, the Secretary of State may designate National Policy Statements. These may also provide for the following matters: [Emphasis added]

(5) The policy set out in a national policy statement may in particular—

- (a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;
- (b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;
- (c) set out the relative weight to be given to specified criteria;
- (d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;
- (e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;
- (f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.

7. By section 104(2): [Emphasis added]

(3) *The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.*

....

(5) *This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.*

(6) *This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.*

(7) *This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits....*

8. The Secretary of State has provided guidance on his approach required to be taken into account.

EN-1 provides for decision making general principles. In particular: [Emphasis added]

4.1.2 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.

9. NRW submits that the paragraph 4.1.2 guidance presumption is the correct start point. However, in this Application, it is disapplied by reason of the relevance of more specific policies that clearly indicate that consent should be refused. In particular:

a) EN-1, each of paragraphs:

- i) 5.9.15 (landscape impact);
- ii) 5.9.15 (visual impact); and

- b) EN-3, paragraph 2.2.2 “important and relevant” (*particular* evidence of location suitability); and
- c) EN-1, paragraph 5.8.15 (setting of a Registered Historic Landscape).

9. NRW submits that the decision maker approach this Application *without* the 4.1.2 presumption.

Item 3: The Relationship between EN1 and 3 and TAN 8

10. NRW has attached a Note on the Correct Approach to the Attribution of Weight to this Submission as **Appendix-NRW-ISHP-3**. This addresses the relationship between the policy issued by WAG and that promulgated by the Secretary of State.

11. EN-3 provides as follows. [Emphasis added]

2.2.1 Policy set out in existing planning guidance in England, and where a proposal is located in Wales in planning policy and advice issued by the Welsh Assembly Government relevant to renewables, will provide important information to applicants of nationally significant energy infrastructure projects (energy NSIPs). The IPC should have regard to these policies and expect applicants to have taken them into account when working up their proposals. Applicants should explain in their applications to the IPC how their proposals fit with the guidance and support its targets or, alternatively, why they depart from them. Whether an application conforms to the guidance or the targets will not, in itself, be a reason for approving or rejecting the application.

2.2.2 Where the IPC considers that any refinement of boundaries of strategic search areas for onshore wind development that has been undertaken by LPAs in Wales is both important and relevant to its decision, the IPC should be satisfied that such an exercise has been undertaken in accordance with the relevant guidance published by the Welsh Assembly Government.

12. NRW submits that:

- a) The Applicant’s case under paragraph 2.2.1 relies exclusively within paragraph 2.2.1 of EN-3 on *conformity* with TAN 8. It advances no case that it departs from TAN 8. It follows that if the Applicant is found by the Ex A or the Secretary of State to have departed from TAN 8 terms, it advances no evidence to show “how” it has departed from TAN 8 and there is, thereby, no evidence of the relevant explanation required by paragraph 2.2.1 to be provided under paragraph 2.2.1. The absence of an explanation means that the Secretary of State cannot himself justify a departure;
- b) The last sentence of paragraph 2.2.1 precludes such weight as may be attributed to Welsh policy issued by WAG from determining the Application, but relevant policy conformity, or non-conformity, may be an additional factor;

- c) EN-3, paragraph 2.2.2 may be regarded as “*criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development*” within the meaning of section 104(5)(b);
- d) Paragraph 2.2.2 terms “important and relevant” reflect those of section 104(2)(d) and so this paragraph may itself be determinative of the Application since it provides a means by which *more detailed* evidence as to locational suitability may be relied upon by the Secretary of State. NRW submits that the local refinement exercise has resulted in the absence of inclusion of the proposed authorised development site within the boundary of that area. Therefore, the proposal is outside of that area. The grant of a DCO in this location for a development type that the local planning authority regard as being required to be within a refined boundary but where what is proposed is accepted as outside of that boundary, would result in a section 104(7) adverse impact on the power delegated – not to the Secretary of State but - to Welsh local planning authorities to themselves undertake that exercise (and recognised as such by EN-3).

Item 5: Compliance or otherwise with Policy

13. NRW submits that, properly interpreting the guidance as a matter of law pursuant to, for example, *Tesco v Dundee*. See **Appendix-NRW-ISHP(a)**
- a) The Application fails to conform with TAN 8, because it is located outside of an “SSA” designated by WAG and does not fall within the scope of the exceptions expressed by WAG in of TAN 8;
 - b) The Application does not “maintain” the relevant TAN 8 objective;
 - c) The Application fails to explain “how” it does not conform with TAN 8 as required by EN-3, paragraph 2.2.2.

NRW FUNCTIONS AND THE CORRECT APPROACH TO THE ATTRIBUTION OF WEIGHT OF ITS RELEVANT EXPERTISE

14. NRW is a body established to exercise combined functions of:
- a) The Countryside Commission of Wales;
 - b) The Forestry Commission of Wales;
 - c) The Environment Agency in Wales.

15. NRW exercises statutory functions pursuant to section 2(2) and (3), Countryside Act 1968 to keep under review all matters relating to “(a) *the conservation and enhancement of the natural beauty and amenity of the countryside, and (b) the need to secure public access to the countryside for the purposes of open-air recreation*” and as to facilities that it considers suitable.
16. Articles 5A(1) and 5C(1)(a)-(c) of the Functions Order require NRW to exercise its functions so as to further nature conservation and the conservation and enhancement of natural beauty and amenity.
17. Section 37, National Parks and Access to Countryside Act 1949 requires NRW to consider in the exercise of their functions under that Act agricultural and economic considerations.
18. NRW exercises functions (including mapping) in relation to open access land pursuant to Countryside and Rights of Way Act 2000 in respect of “open country” (as defined) and by which any person may enter and remain on mapped open country land. The exceptions do not here apply save for the buildings expressly permitted planning permission and no section 191(5), TCPA 1990 certificate has been granted.
19. In this DCO examination, NRW is a Statutory Party and Interested Party
20. In *Levy v Environment Agency* [2003] Env LR 11 at paragraphs 23, and 77-81 **Appendix-NRW-ISHP(a)**, the Court held that a specialist body had a wider margin of appreciation in respect of matters within its technical competence than another individual.
21. The actual degree of weight to be attributed to the opinions of NRW in this particular Application is a matter for the Secretary of State.
22. By section 11, Countryside Act 1968, the Ex A and Secretary of State are subject also to the following:

In the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.

ISH LANDSCAPE, BIODIVERSITY, AND HRA

23. NRW provides expert evidence in relation to this ISH and makes submissions.

Item 2: Landscape

24. The evidence of NRW is provided by Simon White. He is a landscape expert. His CV is attached to this Submission at **Appendix-NRW-ISHL-1(a)**.

EN-1 Landscape Policy

25. By paragraph 5.1.1, “some impacts (such as landscape and visual impacts) arise from the development of any of the types of energy infrastructure covered by the energy NPSs.

26. By paragraph 5.9.8, EN-1 provides for IPC decision making:

5.9.8 Landscape effects depend on the existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change. All of these factors need to be considered in judging the impact of a project on landscape. Virtually all nationally significant energy infrastructure projects will have effects on the landscape. Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

27. Paragraphs 5.9.9 to 11 provide for development within designated landscape areas. The Application site is not within one such area. Therefore the following EN-1 guidance is, instead, engaged: [Emphasis added]

5.9.14 Outside nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. Where a local development document in England or a local development plan in Wales has policies based on landscape character assessment, these should be paid particular attention. However, local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

5.9.15 The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The IPC should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

5.9.16 In reaching a judgment, the IPC should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the IPC considers reasonable.

28. Furthermore:

5.9.18 All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The IPC will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project.

5.9.19 It may be helpful for applicants to draw attention, in the supporting evidence to their applications, to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors. This may assist the IPC in judging the weight it should give to the assessed visual impacts of the proposed development.

29. Paragraphs 5.9.21-23 provide for mitigation but none is relied on this Application.

EN-3 Landscape Policy

30. EN-3 provides as follows for decision making: [Emphasis added]

2.7.48 *Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site.*

2.7.49 *The arrangement of wind turbines should be carefully designed within a site to minimise effects on the landscape and visual amenity while meeting technical and operational siting requirements and other constraints.*

31. NRW provides the expert evidence of Simon White attached to this Submission as **Appendix-NRW-ISHL-1(b)**.

32. NRW submits that the Applicant has underscored the assessment of landscape impacts.

Item 3: Cultural heritage

33. The evidence of NRW is provided by Richard Kelly. He is an expert in Registered Historic Landscapes. His CV is attached to this Submission at **Appendix-NRW-ISHL-3(a)**.

34. The evidence of the Applicant is provided by ADAS UK. It considers at ES File 3, Appendices Part B, Tab 12.2, paragraph 27, as follows: [Emphasis added]

Indirect visual impacts were assessed on Registered Historic Landscapes ... lying within a 10km buffer from the site edge. Only impacts on Registered Historic Landscapes were assessed ... The results of this assessment are presented in a standalone ASIDOL 2 report and are not discussed further in this report (ADAS UK Ltd 2011).

35. That is, the Applicant's consideration of the Registered Historic Landscape was and remains confined to a visual assessment (and which presupposes visitors observing rather than the intrinsic nature of the landscape itself and other relevant relationships).

36. The Applicant's Planning Background is silent as to any consideration of EN-1 policy and its conclusions take no account of that guidance whatsoever.

37. The Applicant's ASIDOL2 assessment at Tab 12.3 explains at paragraph 11 that it took account of "ZVT and wireframes" but there is no evidence that these visualizations were other than a 90m blade turbine. The Applicant's assessment is silent as to any consideration of EN-1 policy and its conclusions take no account of that guidance whatsoever.

38. Melissa Conway gives further evidence in the Applicant's 18th December 2014 Written Representations. She confirms at paragraph 1.1.1, page 212, that she is an archaeologist and has experience of historic landscape characterisation other than in Wales. She relies at paragraph 1.3.5 on the English Heritage Guidance on Setting and at paragraph 1.3.7 to the NPPF. She makes no reference to the Registered Historic Landscape terms. She briefly refers at paragraph 2.1.1 to EN-1 and 3 but without any subsequent analysis of their terms of approach to cultural

heritage nor recognition of historic landscapes. She concludes at paragraph 2.1.7 that the ES chapter and supporting chapter is adequate information on the heritage assets affected and recognises that the ES does not state whether or not harm would occur. She then addresses ASIDOL 2 at paragraphs 2.2.3 and following.

39. Ms Conway appears at paragraph 2.2.5 Setting Guidance, to rely on guidance otherwise than in Wales to consider setting. She considers at paragraph 2.2.11 that a further document may be required to described scheme impacts on setting. Her paragraph 4.1.7 returns to the ES as above.

40. Ms Conway considers indirect effects at section 5.2. In contrast to her evidence to the ISH, she states at paragraph 5.2.5 that: [Emphasis added]

The proposed scheme lies adjacent to the Upland Ceredigion Landscape of Outstanding Historic Interest and in proximity to two Landscapes of Special Historic Interest, the Clywedog Valley and the Elan Valley, and these would cause indirect visual impact of varying degrees on theses landscapes....

41. However, the Applicant has (again) confirmed that it confined its assessment of “setting” to the visual. She states at paragraph 5.2.6: [Emphasis added]

The visibility of the scheme from this HCA was assessed as causing a moderate impact to the Pumlumon HCA itself and would lead to a slight reduction in the value of the Upland Ceredigion Registered Historic Landscape. The overall impact of the development was, therefore, assessed as having a minor impact which would translate to a slight to moderate adverse effect on the Upland Ceredigion Registered Historic Landscape.

42. On behalf of NRW, Mr Kelly disagrees with the degree of adverse effect. See below.

43. Whilst Ms Conway asserts at paragraph 5.2.8 that the effect would be reversible “upon decommissioning”, this is contingent upon actual decommissioning. There is no requirement on the Applicant to not seek to repower the proposal before decommissioning. The potential for future repowering cannot be discounted today.

EN-1

44. By paragraph 5.1.1, Generic Impacts:

5.1.1 Some impacts (such as landscape and visual impacts) arise from the development of any of the types of energy infrastructure covered by the energy NPSs.

45. Thus, EN-1 distinguishes between landscape and (by contrast) visual impacts.

EN-1 Heritage Policy

46. EN-1, paragraph 5.8.11 provides: [Emphasis added]

5.8.11 *In considering applications, the IPC should seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development, including by development affecting the setting of a heritage asset, taking account of:*

- *evidence provided with the application;*
- *any designation records;*
- *the Historic Environment Record, and similar sources of information¹²¹;*
- *the heritage assets themselves;*
- *the outcome of consultations with interested parties; and*
- *where appropriate and when the need to understand the significance of the heritage asset demands it, expert advice.*

47. Further: [Emphasis added]

5.8.12 *In considering the impact of a proposed development on any heritage assets, the IPC should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development.*

5.8.13 *The IPC should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality¹²².. The IPC should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use. The IPC should have regard to any relevant local authority development plans or local impact report on the proposed development in respect of the factors set out in footnote ¹²².*

48. Furthermore: [Emphasis added]

5.8.14 *There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II listed building park or garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including Scheduled Monuments; registered battlefields; grade I and II* listed buildings; grade I and II* registered parks and gardens; and World Heritage Sites, should be wholly exceptional.*

49. In addition: [Emphasis added]

5.8.15 *Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss. Where the application will lead to substantial harm to or total loss of significance of a designated heritage asset the IPC should refuse consent unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm.*

50. Further: [Emphasis added]

- 5.8.16 *Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. The policies set out in paragraphs 5.8.11 to 5.8.15 above apply to those elements that do contribute to the significance. When considering proposals the IPC should take into account the relative significance of the element affected and its contribution to the significance of the World Heritage Site or Conservation Area as a whole.*
- 5.8.17 *Where loss of significance of any heritage asset is justified on the merits of the new development, the IPC should consider imposing a condition on the consent or requiring the applicant to enter into an obligation that will prevent the loss occurring until it is reasonably certain that the relevant part of the development is to proceed.*
- 5.8.18 *When considering applications for development affecting the setting of a designated heritage asset, the IPC should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the IPC should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.*

51. The Applicant is required to undertake an assessment including as follows.

- 5.8.8 *As part of the ES (see Section 4.2) the applicant should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset. As a minimum the applicant should have consulted the relevant Historic Environment Record¹²⁰ (or, where the development is in English or Welsh waters, English Heritage or Cadw) and assessed the heritage assets themselves using expertise where necessary according to the proposed development's impact.*
- 5.8.9 *...Where proposed development will affect the setting of a heritage asset, representative visualisations may be necessary to explain the impact.*

52. EN-1 provides the following guidance in relation to setting of Registered Historic Landscapes [Emphasis added]

- 5.8.1 *The construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.*
- 5.8.2 *The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, landscaped and planted or managed flora. Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest are called "heritage assets". A heritage asset may be any building, monument, site, place, area or landscape, or any combination of these. The sum of the heritage interests that a heritage asset holds is referred to as its significance¹¹⁸.*
- 5.8.3 *Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are: a World Heritage Site; Scheduled Monument; Protected Wreck Site; Protected Military Remains, Listed Building; Registered*

*Park and Garden; Registered Battlefield; Conservation Area; and Registered Historic Landscape (Wales only)*¹¹⁹.

5.8.4 *There are heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance. These include:*

- *those that have yet to be formally assessed for designation;*
- *those that have been assessed as being designatable but which the Secretary of State has decided not to designate; and*
- *those that are incapable of being designated by virtue of being outside the scope of the Ancient Monuments and Archaeological Areas Act 1979.*

5.8.5 *The absence of designation for such heritage assets does not indicate lower significance. If the evidence before the IPC indicates to it that a nondesignated heritage asset of the type described in 5.8.4 may be affected by the proposed development then the heritage asset should be considered subject to the same policy considerations as those that apply to designated heritage assets...*

5.8.7 *Impacts on heritage assets specific to types of infrastructure are included in the technology-specific NPSs.*

EN-3 Heritage Policy

53. EN-3 includes as follows. By paragraph 2.7.41 Historic environment impacts are covered in Section 5.8 of EN-1. However, with respect to onshore wind farms, the following considerations also apply. The Applicant's assessment provides, by paragraph 2.7.42, that "visualisations may be required to demonstrate the effects of a proposed onshore wind farm on the setting of heritage assets." But the Applicant has provided to date visualisations alone of 90m diameter turbines. These appear smaller in the middle distance when viewed from Pumlumon and with a more limited stacking effect.

54. Further, by paragraph 2.7.43: [Emphasis added]

onshore wind turbines are generally consented on the basis that they will be time-limited in operation. The IPC should therefore take into account the length of time for which consent is sought when considering any indirect effect on the historic environment, such as effects on the setting of designated heritage assets.

55. The proposed authorised development lies adjacent to the Registered Historic Landscape of Upper Ceredigion. The ASIDOL 2 guidance explains at paragraph 1.6 that: [Emphasis added]

1.6 All landscape areas identified on the Register are of national importance in the Welsh context. The difference between the landscapes of outstanding historic interest featured in Part 2.1, and the landscapes of special historic interest featured in Part 2.2, therefore, is one of degree, and not quality of historic interest. The distinction was established by expert consensus following the scoring thresholds set for the selection of areas to be included on the Register.

56. Upper Ceredigion lies in Part 2.1. It is an outstanding Registered Historic Landscape. Within Upper Ceredigion lies Plym Limon. The authorised development is “adjacent” (as Ms Conway accepts) to Plym Limon.

57. NRW provides the expert evidence of Richard Kelly attached to this Submission as **Appendix NRW-ISHL-3(b)**.

58. NRW submits that:

- a) The Applicant recognised the force of Mr Kelly’s conclusions at the oral ISH because it was driven to make two points only:
 - i) The consent is sought for a limited period alone. However, this is an assertion and 25 years remains a considerable period. It also assumes a concluded assessment that is itself flawed by being limited to visual considerations alone. If the Applicant’s approach to a period was an answer here, it would always be an answer and obviate (as in put a red line through the guidance requiring) the need to undertake the approach required by EN-1 heritage guidance *per se*; and
 - ii) Its expert’s sole response to Mr Kelly was that the guidance provides that there “can” be an affect on setting. However, it had already accepted that there “would” be an effect on Pumlumon;
- b) The Applicant has limited its assessment of impact on the setting of the Registered Historic Landscape to *visual* impacts alone. However, EN-1 clearly distinguishes at paragraph 5.1.1 between landscape and visual impacts and also provides particular guidance on Historic Landscapes that provides at 5.8.2 that visible aspects are one element only of a broader scope of considerations. It is clear- landscape hold value that is broader than the visual;
- c) Mr Kelly’s evidence addresses the requirements of EN-1, paragraph 5.8.12 and the broad scope of landscape and of “setting” in the particular Welsh context. The Applicant’s has not;
- d) The clear terms of EN-1 paragraph 5.8.18 describe not a presumption in favour of the authorised development but a balancing exercise in which there may be engendered a presumption to not harm the Registered Historic Landscape. In circumstances where the Applicant has limited its assessment to the visual, but the Register states that Historic

Landscapes are to be more broadly considered, the Heritage setting presumption remains unjustified by the Applicant.

Item 4: Ecology

59. The evidence of NRW is provided by Dr Carol Fielding. She is the NRW case officer for this Application and an expert in assessing windfarm developments. Her CV is attached to this Submission at **Appendix-NRW-ISHL-4(a)**. She is also able to draw on the expertise of particular specialists in relation to:

- a) Dave Reed (NRW Senior Peatland Advisor) on peat ;
- b) Dr Sian Whitehead (NRW Terrestrial and Freshwater Ornithologist) on birds;
- c) Jean Matthews (NRW Mammal Ecologist) and Matthew Ellis (NRW Senior Species Officer) on European Protected Species.

EN-1 Ecology Policy

60. EN-1 includes as follows.

5.3.1 Biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part.

61. The IPC's role is explained as follows:

5.3.5 The Government's biodiversity strategy is set out in 'Working with the grain of nature'. Its aim is to ensure:

- *a halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems; and*
- *the general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.*

62. Further:

5.3.6 The benefits of nationally significant low carbon energy infrastructure development may include benefits for biodiversity and geological conservation interests and these benefits may outweigh harm to these interests. The IPC may take account of any such net benefit in cases where it can be demonstrated.

5.3.7 As a general principle, and subject to the specific policies below development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.

5.3.8 In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats

and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

63. The guidance also provides for species protection:

5.3.16 Many individual wildlife species receive statutory protection under a range of legislative provisions

5.3.17 Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales and thereby requiring conservation action. The IPC should ensure that these species and habitats are protected from the adverse effects of development by using requirements or planning obligations. The IPC should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits (including need) of the development outweigh that harm. In this context the IPC should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from a proposed development.

64. Mitigation guidance includes:

5.3.20 The IPC will need to take account of what mitigation measures may have been agreed between the applicant and ... the Countryside Council for, and whether ... the Countryside Council for Wales has granted or refused or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

EN-3 Ecology Policy

65. EN-3 provides:

2.7.30 Generic biodiversity and geological impacts are covered in Section 5.3 of EN-1. In addition, there are specific considerations which apply to onshore wind turbines as set out below.

2.7.31 In addition to the impacts set out in EN-1, there is the potential for the rotating blades of a wind turbine to strike birds and adversely affect bats, resulting in injury or death.

66. Further: [Emphasis added]

2.7.34 Relevant data from operational wind farms should be referred to in the applicant's assessment.

2.7.35 It may be appropriate for the assessment to include collision risk modelling for certain species of birds or to estimate the mortality rate for certain species of bat. The parameters to be used in such modelling should have been discussed with the relevant statutory consultees.

67. Furthermore:

2.7.38 Taking into account other constraints, wind turbines should be laid out in such a way as to minimise risk of impacts on birds or bats where the risk assessment shows there is a significant risk.

EN-3 Peat Policy

68. EN-3 provides for peat as follows.[Emphasis added]

2.7.32 Onshore wind farm sites within ... Wales may be proposed on peat. Peat is a sensitive habitat that is important for many species of flora and fauna. In some instances, soil disturbance may lead to change in the local hydrological regime which can affect biodiversity. Further, peat is rich in carbon so disturbance of peat can result in a release of carbon stored in soils.

2.7.37 In addition to Section 5.3 of EN-1 there are specific considerations which should inform IPC decision-making where developments are proposed on peat. In these cases the IPC should be satisfied that the wind farm layout and construction methods have been designed to minimise soil disturbance when building and maintaining roads and tracks, turbine bases and other infrastructure. This is to ensure the development will result in minimal disruption to the ecology, or release of CO2 and that the carbon balance savings of the scheme are maximised.

Peat

64. NRW considers that the baseline with regard to both habitats and peat is insufficient to demonstrate that the disturbance to peat has been minimised. The Applicant's assessment has also not adopted a worse-case scenario and has relied on mitigation measures which are not secured. Overall it cannot be demonstrated that the carbon benefits have been maximised.

Peat Management Plan

69. A peat management plan (PMP) has been submitted to NRW after being requested in our Written Representations of 18 December 2014 and S42 consultation response of July 2013. The draft plan was submitted by the Applicant to NRW on 10 February 2015 but was sent by the Applicant (inexplicably) not to the case officer (nor copied in to her) but instead to a NRW officer who was not part of NRW's case management team for this project. The officer, therefore, understandably did not action the report or provide any response as he had no brief to do so. NRW emailed the Applicant on 13 February 2015 specifically requesting that all correspondence with regard to Mynydd y Gwynt needed to be copied to the NRW case manager but the PMP was not (again) at this time forwarded to NRW's case officer. Therefore, NRW's Mynydd y Gwynt case team remained unaware that the Peat Management Plan had been sent to NRW's other office until 3 March 2014. The PMP was not submitted to the ExA at Deadline V on 15 March 2015.
70. The Applicant, in its PMP, describes the peat on the site as patchy *i.e.* the Order's limits of deviation area has the potential to change in depth spatially over relatively short distances rather than being evenly distributed. Sufficient actual data therefore needs to be collected to capture this patchiness if the assessment of impacts is to be reasonably valid.
71. The PMP asserts that it has assessed the impact on peat on the assumption that the current location of infrastructure shown on the Worksplan – excluding the Order's provision for limits of

deviation - is the worse-case scenario. In this regard and in relation to excavated peat it states that 'The total figure is based upon the current layout and with micro-siting it may be possible to reduce the figure'. It therefore works on the assumption that post consent micrositing will *reduce* the impact. NRW do not consider that this can be a reasonable assumption given that:

- a) Requirement 6 of the DCO allows the Applicant to move infrastructure including roads and turbines anywhere within the Limits of Deviation without the need for consultation;
- b) The DCO does not specify the dimensions of a number of the Works. For example the PMP works on the assumption the roads have a width of 6m but this dimension is not secured in the Work No 6 of the DCO;
- c) It does not taken account of the need to micro-site infrastructure based on a number of parameters such as engineering constraints, PROW, bats, watercourses and habitats. The presence of these other constraints means that there is a reasonable likelihood that micrositing will *not* be solely determined by the need to reduce impacts on peat.

72. The PMP calculates the amount of peat to be excavated based on the depth of peat measured at the infrastructure locations and these estimates are provided in Table 1 of the PMP. The data for peat depth measurements have been provided to NRW outside the Examination ISH process which has allowed us to properly examine the data from which average peat depths have been determined. Analysis shows that there are areas of infrastructure with no associated peat depth data. For example, for 74% (n=27) of the crane pads there were *no* peat depth measurements under the direct footprint of the infrastructure. For 75% of turbines there were *no* or 1 peat probes and for the remaining 25% of the turbines there were 2 peat probes within the footprint of the turbine foundation.

73. For the PMP the Applicant has used the collated data to interpolate – or hypothesise - peat depths under infrastructure. Although modelling can be a suitable approach to estimating peat depths it needs to be demonstrated by the Applicant that the modelling is sufficiently accurate. The modelling appears to have simply used an approach of averaging data *between* data points rather than taking account of factors such as topography and drainage which may significantly affect the likely peat depths. Whilst this is a DCO, the latter approach is one which we would normally expect windfarm ESs to adopt and this DCO is subject to an ES assessment.

74. The issues inherent in the Applicant's approach are demonstrated by comparison of some actual data collected by NRW with the Applicant's hypothetical modelled estimates. Examples are as follows:

- a) SN 83098 86358 NRW actual probe = 80cm; Applicant's model 31-50 cm
- b) SN 84538 85486 NRW actual probe = 130 cm; Applicant's model 1-30 cm
- c) SN 84921 85540 NRW actual probe = 190 cm; Applicant's model 51-100 cm
- d) SN 84848 84235 NRW actual probe = 50 cm; Applicant's model 1-30 cm
- e) SN 84825 84211 NRW probe = 75 cm; Applicant's model 1-30 cm
- f) SN 84848 84234 NRW probe = 50 cm; Applicant's model 1-30 cm

The above represent areas in which NRW have collected peat depth data. If this level of disparity between actual and estimated peat depths is replicated across the site then the PMP would be *significantly underestimating* the amount of peat to be excavated. Therefore NRW's position is that, although some peat depth data has been collected for the site, there is insufficient data to have confidence in the baseline peat information.

75. NRW's guidance note 'Assessing the Impacts of Windfarm Developments on Peatlands in Wales' states '*Peat depth measurements should be recorded in the vicinity of all planned windfarm infrastructure*' which has not been undertaken by the Applicant. Examples of areas of concern include the track section between T2 and T3 which has very poor coverage by peat probing and is in an area where there are known deep peat deposits. There is also an absence of peat probing on the track to T8, that appears to cross a flushed area that lower downslope has probe depth of 80cm (SN 83900 85737). Also the track near T10 crosses deep peat, but there are no peat probes – the peat model indicates there is 31-50 cm of peat with only one area of 51-100cm estimated depth. The road spur to T23 has no peat probes at the beginning. There has been no attempt to measure peat depth across the track micro-siting area to determine which direction is optimal (on peat grounds) to mitigate the track away from deeper peat and without regular peat probes at the centre of the track and then peat probes 20-30 m away from that probe, it is impossible to know that if micro-siting occurs, which direction to move the track to lessen impact on peat.

76. As previously raised in our written representations the Applicant has not undertaken any assessment of the potential impacts on peat as a result of drainage. The need for such an assessment is contained in NRW's guidance document 'Assessing the Impacts of Windfarm

Developments on Peatlands in Wales’ which is referenced by the Applicant (para 11.7 ES) as having informed the scope of the ES. This guidance states: [Emphasis added]

Potential impacts of wind farm developments on peatland habitats include direct habitat loss through construction of windfarm infrastructure, and habitat modification or even loss primarily due to adverse changes to hydrology. Direct immediate habitat loss due to access tracks, turbine bases, permanent crane pads etc is straightforward to quantify, but requires good quality data for accurate assessment – see below. Damage caused by altered hydrological regimes is less easily quantified, but in the long-term this may lead to more widespread habitat deterioration and so must be a key focus of impact assessment.

77. The Applicant at the hearing submitted a ‘Peat Comparison’ document which provides a comparison of the Peat Management Plans for Mynydd y Gwynt and three other windfarms in Wales. These are the Carnedd Wen and Llanbrynmair windfarms in Powys which are S36 Electricity Act applications (subject to appeal) and the Clocaenog windfarm in north-east Wales which was consented under the Planning Act 2008. The Applicant seeks to compare its hypothetical average peat depth under infrastructure with the total peat extraction volume for each of the four schemes. Of the numerous windfarms consented and planned in Wales these three schemes represent those likely to have the *greatest* impact on peat. But there is no comparison with the peat impact of the other 9 windfarms in the planning system in Powys or the Brechfa windfarm consented NSIP.
78. NRW has considered this report and consider that the conclusions are predicated upon the (in)accuracy of data used to calculate Mynydd y Gwynt’s excavated peat volume. As stated above, we have concerns about the calculations. Comparison with the peat management plans for these other schemes demonstrates some additional issues.
79. The volume of peat to be excavated is dependent both on the depth of the peat and the area of peat to be excavated at the infrastructure footprint. Comparison of the construction areas for the four schemes demonstrates that the Mynydd y Gwynt scheme has a relatively small footprint compared to the other projects (for example, it appears to exclude a reasonable allowance for excavation around foundation plates, roads and cable trenches) and it is unclear whether worse-case scenario has been assessed with regard to the potential excavation areas. It appears not.

Table 1

	Mynydd y Gwynt	Carnedd Wen	Llanbrynmair	Clocaenog
Number of	27	50	30	32

turbines				
Height of turbines	125m	137m	126.5m	145m
Area of assumed peat disturbance around turbine and crane pad	1,042m ²	1,525m ²	4,768m ²	3,384m ²
Number of peat probes under turbine locations	4 turbines have 0 probes; 16 turbines have 1 probe; 7 turbines have 2 probes.	Min of 4 probes	9 probes	Minimum of 8 probes
Area of peat to be affected by drainage around turbines and crane pads	Not considered			Uses a 10m distance around infrastructure
Area of Habitat Restoration	68ha	673ha	Approx. 500ha	unknown

80. NRW therefore considers that the Applicant has compared Mynydd y Gwynt to three other windfarms with different - relatively large - impacts on peat compared to other windfarm projects in Wales. There also remains uncertainty, however, about the accuracy of the Applicant's estimate of their impact on peat. By contrast, it is evident that the other three projects have adopted a rigorous approach to their assessment of impacts by undertaking more detailed peat probing under infrastructure footprints. For example the three other schemes have all collected more peat probes under turbines (see Table 1 above). The table above also demonstrates they have adopted an approach of providing peatland restoration on a scale to ensure that any impacts on peat *are* compensated and the correct amount of peat included in the carbon calculator so that the decision maker may properly consider that carbon savings have been maximised. For example, the Carnedd Wen scheme is restoring 673ha of blanket bog to mitigate their relatively large impact on peat.

Red kite

81. The baseline red kite surveys were undertaken in 2005 and 2009/10 during the breeding season and 2010/11 during the winter season. An additional red kite nest survey was undertaken in

2014. The vantage point data to inform the collision risk assessment was undertaken in 2009/2010. This data is now older than good practice guidance would advise is suitable to inform an assessment (ref). There is also an issue in that the surveys do not always comply with good practice guidance with regard to bird surveys for windfarm assessments (SNH 2014) as outlined in NRW's previous submissions and responses to the ExA's questions. The Applicant has maintained that the long period over which surveys were undertaken means that the baseline trend has been detected and that this compensates for the lack of more recent data. It is not clear if two data points can clearly provide an accurate trend and there can be no certainty that any trend detected between the first round of surveys in 2005 and second round of surveys around 2010 will have continued to the current time. With regard to red kite specifically, given that the national population is rising it might be expected that the population may have continued to increase locally to 2014 but the assessment within the ES/HRASR does not extrapolate from the baseline in 2010 to 2014 based on any likely trends.

82. The HRASR (paragraph 90 V3) and other submissions by the Applicant have stated that the population of red kite within the SPA has fallen by 47% and that it 'barely qualifies' (para 11.01 ES). It is not the case that the population of red kite in the SPA was 34 pairs at the time of designation in 1996 and that it has fallen to 18 pairs. In 1997 the number of breeding pairs within the SPA was 15 pairs with a further 16 pairs within 1km of the boundary and 9 within 2km of the boundary (a total of 41 pairs). The 34 pairs used in the classification process for the SPA is considered to relate to the total number of probable and confirmed breeding pairs within, or within 2km, of the SPA for one year in the early 1990s. The last monitoring report in 2011 recorded 18 pairs of red kite within the SPA and 66 pairs within 2km. The population of red kite within and adjacent to the SPA has therefore increased since classification of the site. We do not accept any inference that the Elenydd Mallaen SPA no longer qualifies as an European site.
83. The HRASR states that because the lower limit for the conservation objective for the numbers of red kite is 15 pairs and the current population is above this then the scheme can reduce the population to 15 pairs before it can be considered to have an effect. This is an incorrect interpretation of how the effect of a project should be assessed against the conservation objective in that it should be assumed that the existing population should be maintained so that it is stable or increasing in size.
84. The Applicant has made the case that the birds using the site are unlikely to be from the SPA. NRW considers that the Applicant's data in the ES does not allow the exclusion of the potential

for the birds to originate from the SPA or its buffer. The HRA should proceed on the basis that the birds may be from the SPA and then look at the potential impacts of collision and displacement on the SPA population of red kite.

85. Mitigation for collision risk is suggested in the HRASR (para 105 version 3) although there is no quantification of the reduction in the likely collision numbers. The mitigation aims to reduce activities which would provide foraging for red kite. However it is unclear if these activities currently occur in the areas around turbines and whether a commitment not to undertake them would lead to any reduction in the numbers of red kites using the area. The HRASR says only 15% of the flock will be lamed within 150m of turbines but it is unclear if this is a decrease in numbers. In addition it states that no cutting for hay or silage will occur but none of the land within 150m of turbines appears suitable for this activity so this does not represent a management change. In conclusion there can be little confidence that this mitigation would reduce collision risk.
86. The in-combination assessment for the Elenydd Mallaen SPA is contained within paragraphs 131-141 of the HRASR (V3). NRW considers this assessment is incomplete because:
- a) It does not include the collision risk figures for any of the identified windfarms considered in the assessment. For example there is no consideration of the additive effects of collision numbers contained in the ESs for these various windfarm projects. Reference to the ES for the Bryn Blaen windfarm identifies a collision risk of 6.84 red kite per year for a 98% avoidance rate. We suggest the Applicant collates this detailed information for all of the relevant windfarms to inform the HRASR;
 - b) It states (para 134) that there is no evidence that operational windfarms have had a negative impact on red kite and the effect of the Bryn Titli windfarm has been minimal. NRW is not aware of any collision or mortality monitoring for red kite having been completed at any windfarm in Wales. Some monitoring for the potential displacement of red kite was completed for one year after construction for the Bryn Titli windfarm in the early 1990s but this was limited in its scope and design and has not been peer reviewed. The conclusions of the reports were that red kite may have been displaced following construction of the windfarm but NRW accepts that limited weight should be placed on these reports given the limited nature of the monitoring and the fact they have not been peer reviewed;
 - c) It concludes no likely significant effect in-combination with regard to the Mynydd y Gwynt grid connection because it states the line will be designed in such a way as to avoid bird

electrocution. This mitigation in the form of the line design is not secured within the DCO so there is no certainty that this mitigation can be delivered. The assessment will need to consider the worse case scenario with regard to line design.

87. NRW does not agree that the project can be shown to have no likely significant effect on the Elenydd Mallaen SPA alone or in-combination. Further information needs to be collated by the Applicant on in-combination impacts and the likely combined collision risks related to the red kite population, having assumed that the birds may be from the SPA.

Outstanding issues with regard to the River Wye SAC

88. NRW has been working with the applicant to agree mitigation measures for the River Wye SAC including provisions within the CEMP and Surface Water Management Plan. A revised Water Quality Monitoring Plan has recently been submitted by the Applicant and is being considered by NRW. The effectiveness of mitigation measures for the River Wye SAC will be dependent on the detailed design, implementation and management of the mitigation and much of this work will need to be done post-consent. However it is essential to ensure the necessary measures are secured in the DCO and draft plans.
89. The lack of specificity within the draft DCO means there is uncertainty regarding the identification of the worse case scenario for assessing impacts on the River Wye SAC and identifying mitigation measures. We do not agree that the HRASR currently assesses the worse case scenario. For example, Work No 5 in the draft DCO provides for a construction compound but no dimensions are given. The compound will be used for the storage of 41,000m³ of imported stone and 5,420m³ of sand [MYG-ES-13 Transport] and will also be the location of the concrete batching plant. Watercourses are present in the vicinity of the compound which drain to the River Wye SAC. If the dimensions of the compound are undefined then there is uncertainty as to the proximity of pollution sources to watercourses.
90. Requirement 6 of the draft DCO provides for infrastructure to be moved within the Limits of Deviation. This would allow infrastructure to be moved close to watercourses draining to the River Wye SAC (and the undesignated River Severn). An example is turbine 25 which under the current proposed Limits of Deviation could be moved to be immediately adjacent to a watercourse. NRW consider that a key mitigation measure for the avoidance of impacts on the SAC is to ensure that there is sufficient distances between areas of disturbed ground and

watercourses. Siting infrastructure so close to watercourses will mean that mitigating impacts could be difficult.

91. The in-combination assessment for the River Wye SAC within the HRASR is incomplete. It needs to consider:
- a) The proposed Bryn Blaen windfarm which is both within the Wye and Severn catchments (see **Appendix-NRW-ISHL- 4(b)**). With regard to the SAC features (other than otter) that part of the project within the Wye catchment is relevant to the in-combination assessment. We consider that part of the access road from the A470 and the 8km grid connection between Bryn Blaen and the Mynydd y Gwynt is within the Wye catchment. With regard to otter, a SAC feature which is not confined by catchment boundaries, the in-combination assessment needs to consider the complete project;
 - b) The Neuadd Goch windfarm;
 - c) The Llandinam 132kV line.
92. The Applicant at the hearing raised the issue of the 132kV grid connection and that it should be possible to construct this without giving rise to levels of soil disturbance which would cause siltation within watercourses. This matter is further considered in para
93. NRW does not agree that it can current be demonstrated that the project would not have a likely significant effect on the River Wye SAC.

Bats

94. In the summary of issues submitted by the Applicant at the ISH bats was listed as a matter to be considered. NRW's Written Representation of 18 December 2014 sets out our position with regard to bats including that the bat surveys undertaken to inform the ES do not conform with good practice guidance for bat surveys to inform windfarm developments (Bat Conservation Trust 2012).
95. NRW's Written Representation of 18 December 2014 proposed a draft requirement as follows:
- 1. *No development, vegetation clearance or tree felling shall commence until a Bat Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should be implemented as approved and include but not be limited to details of:*

- a) *Pre-commencement surveys to be undertaken for bats, and if necessary mitigation measures detailed to ensure the protection of the species during felling and site clearance works and construction of the windfarm and associated infrastructure;*
- b) *A monitoring procedure to record bat activity and weather conditions;*
- c) *A monitoring procedure to record bat mortality at wind turbines;*
- d) *Annual reporting of the results of monitoring, and where necessary details of any remedial action to reduce bat mortality;*
- e) *A procedure for agreeing and implementing remedial measures aimed at reducing or avoiding bat mortality. Such measures may include, but not be limited to, turbine curtailment, and or land management changes; and*
- f) *An agreed timeframe for monitoring, sufficient to determine the impact of the operation of the windfarm on bats and the efficacy of any remedial measures to be implemented. Where surveys are required, the methods and scope of them shall be submitted to and agreed in writing with the LPA prior to them being undertaken.*

NRW's current understanding is that the Applicant has agreed to this requirement being added to the draft DCO.

96. The above requirement would provide for update and mortality surveys for bats with curtailment of turbines dependent on the outcomes of these surveys. It does not address the issue of the micro-siting of turbines away from high risk locations for bats. Natural England Technical Information Note TIN051: Bats and onshore wind turbines Interim guidance provides current good practice guidance with regard to the siting of turbines in proximity to habitat features likely to be used by bats. This advises that turbines are sited so the rotor-swept area is at least 50 m from the nearest part of a habitat feature likely to be used by bats. Habitat features likely to be used by bats include forestry edges, sheltered valleys and water features.
97. There are a number of turbines which are either within or have the potential to be moved within 50m of a habitat feature likely to be used by bats. The Applicant in their Deadline III submission accepts that there are a number of turbines which are within 50m of forestry edges and states that they would be willing to accept a requirement in the DCO to ensure turbines are sited more than 50m from the edges of the Hafren forest. However this commitment has not been included in the draft DCO by the Applicant. NRW considers that the requirement would need to be further expanded to ensure turbines are not micro-sited within 50m of water features. The Applicants deadline II representation accepts that the bat surveys used to inform the ES demonstrated that bats are using 'waterbodies, streamlines and woodland interfaces'.

Item 5: Grid Connection

98. NRW has provided a submission on the need to undertake a Habitat Regulations Assessment or to refuse here consent for this Application. Further, the ISH on this matter which raised certain further matters, NRW submits as follows.

99. The Planning Act 2008 includes as follows. By section 104:

- (3) *The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.*
- (4) *This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.*
- (5) *This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.*
- (8) *This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.*

100. The Habitats Directive includes under Article 6(3): [Emphasis added]

3. *Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*

101. In *Waddenzee*, C-127/02, the Court considered the Habitats Directive and held: [Emphasis added]

38 The answer to the second question must therefore be that Article 6(3) of the Habitats Directive establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of the Habitats Directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive's objectives, and cannot be applicable concomitantly with Article 6(3)...

57 So, where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation.

58 In this respect, it is clear that the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle (see Case C-

157/96 National Farmers' Union and Others [1998] ECR I-2211, paragraph 63) and makes it possible effectively to prevent adverse effects on the integrity of protected sites as the result of the plans or projects being considered. A less stringent authorisation criterion than that in question could not as effectively ensure the fulfilment of the objective of site protection intended under that provision.

59 Therefore, pursuant to Article 6(3) of the Habitats Directive, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned, in the light of the site's conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects (see, by analogy, Case C-236/01 Monsanto Agricoltura Italia and Others [2003] ECR I-0000, paragraphs 106 and 113).

102. At domestic level, Regulation 61 of the Conservation and Habitats Regulations 2010 reflects Article 6(3) and the precautionary principle as follows: [Emphasis added]

- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
 - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
 - (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.
- (2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required...
- (6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

103. DEFRA has published guidance on competent authority coordination under the Habitats Regulations (July 2012). See attached at **Appendix-NRW-ISHL-5(a)**. This includes: [Emphasis added]

Adopting the assessment, reasoning or conclusions of another competent authority³

5. The Regulations transposing the Habitats Directive enable competent authorities to adopt the reasoning or conclusions of another competent authority as to whether a plan or project is likely to have a significant effect on a European site or will adversely affect the integrity of a European site. They also provide that a competent authority is not required to assess any implications of a plan or project that would be more appropriately assessed by another competent authority.
6. Competent authorities should adopt the reasoning, conclusion or assessment of another competent authority in relation to the appropriate assessment requirements for a plan or project, if they can. This can happen when all or part of the appropriate assessment requirements have already been met by another competent authority. It could also happen if one competent authority is completing all or part of the appropriate assessment requirements on behalf of others. Competent authorities remain responsible for ensuring their decisions are consistent with the Habitats Directive.

104. For the purposes of the Planning Act 2008, PINS has published guidance on the requirements and approach of the Habitats Directive. This included PINS Advice Note 10 V 4 (October 2012). See attached at **Appendix-NRW-ISHL-5(b)**. The PINS Advice Note 10 V 5 (April 2013) updated Version 4 and includes: [Emphasis added] **Appendix-NRW-ISHL-5(c)**

Anyone applying for development consent for a NSIP must provide the competent authority with such information as may reasonably be required 'for the purposes of the assessment' or 'to enable them to determine whether an appropriate assessment is required'¹⁵ ...

Applicants are therefore strongly advised to use the pre-application consultation process to provide assurances from the statutory nature conservation bodies (SNCBs) and other bodies that all potential impacts have been addressed appropriately and in sufficient detail before an application is submitted...

When considering whether a proposal has the potential to significantly affect European sites it is advised that the applicant commences consultation with the relevant non-statutory and statutory nature conservation bodies at the earliest point in the pre-application process. Whilst this is the applicant's responsibility during the pre-application stage of the process, in due course the competent authority will need to be satisfied that it agrees with the applicant's conclusions, having regard to the views of the SNCBs...

105. It also includes, in particular, at page 8: [Emphasis added]

Applicants must conclude whether the proposal, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site. Some projects may be unlikely to have significant effects on their own but effects in combination with other projects may be significant. The protective measures of the Directive could be seriously undermined if these combinations of projects escaped assessment. Whilst there is no legal definition of what constitutes a plan or project for the purposes of the Habitats Regulations, the Planning Inspectorate advises that the following should be considered (please note this list is not exhaustive)¹⁸:

- *projects that are under construction;*
- *permitted application(s) not yet implemented;*
- *submitted application(s) not yet determined;*
- *all refusals subject to appeal procedures not yet determined;*
- *projects on the National Infrastructure's programme of projects¹⁹;and*
- *projects identified in the relevant development plan (and emerging development plans - with appropriate weight being given as they move closer to adoption) recognising that much information on any relevant proposals will be limited...*

The European Court of Justice in the Waddenzee case²⁰ considered that the effects of the project should be 'identified in the light of the best scientific knowledge in the field'²¹. There should be a continuous evaluation of the assessment findings against thresholds of LSE. If at any time the HRA determines 'no significant effect (alone or in-combination)' and no reasonable scientific doubt remains²², then the assessment can be concluded. The applicant should then provide the results of their assessment with the DCO application in the form of a NSER to meet the requirements of Regulation 5(2)(g) of the APFP Regulations (any European sites potentially affected by the proposed development must be identified).

Outline Facts

106. The Applicant has provided a Grid Connection Statement **Document MYG-AD-10** and its Application Form explains that this application does not include for Grid Connection.

107. However, before the Application was made, in July 2012, National Grid registered with the National Infrastructure Programme an application for the “*Mid Wales Electricity Grid Connection*” for the Construction of a new 400 kV electricity connection between Shropshire and Powys. From that date that proposal qualified as a registered National Infrastructure Project within the meaning of page 8 of Advice Note 10 as set out above.

108. On 8th July 2013, NRW provided its section 42, PA 2008, response to the current Application including as to Grid Connection. See attached **Appendix-NRW-ISHL-5(d)**. This included: [Emphasis added]

There appears to be uncertainty as to the feasibility of the route of the grid connection proposed in the ES. The Mynydd y Gwynt windfarm does not have a contracted connection with Scottish Power Energy Networks (SPEN) and the project’s potential capacity has not been taken into account when planning the new proposed 132kV lines being promoted by SPEN. Further information and assessment is therefore required on the consequences of consenting this windfarm on the need for further upgrades to the Mid Wales electricity system and on the potential for cumulative impacts with other grid lines and windfarms. The proposed new grid network has been planned to service the SSAs which means that development of new windfarms away from these areas requires additional grid connections.

109. In July 2014, the Applicant provided a Habitats Regulations Assessment Screening Report (“HRSA”). This document is (and remains) subject to an iterative process. It has been updated since its original inclusion in the Application as **Document MYG-AD-9** (then dated July 2014). The Application’s project description is at paragraph 19 of that document and does not include for the making of any Grid Connection. Paragraph 32 and 33 further state: [Emphasis added]

32. Two possible grid connection corridors are suggested: Option 1 was proposed by Scottish Power Manweb(SPM) in their grid connection offer of December 2011 and Option 2 was suggested following discussions with SPM with regard to their February 2013 grid connection offer. Only option 2 was identified in the Section 42 consultation response from SP Manweb. Option 1 was not therefore considered in the ‘in-combination’ assessment.

33. Although it is incumbent on MYG to demonstrate ‘connectability’, the HRA screening will be required as part of the separate NSIP project to provide the grid connection – which is not part of this project.

110. NRW submits that the Applicant recognised that the Mid-Wales Grid Connection by National Grid had been registered but excluded it from account in its HRA. That exclusion was in error. This is because between July 2013 and July 2014, the Applicant and its legal advisors had previously

corresponded with NRW which had replied in February 2014. See attached at **Appendix-NRW-ISHL-5(e)**. NRW advised: [Emphasis added]

NRW responded to the Section 42 consultation for the proposed Mynydd y Gwynt windfarm in a letter dated 8 July 2013. In this letter we requested that we were consulted on the HRA screening report prior to the application being submitted to the Planning Inspectorate. We also requested that sufficient time was allowed for outstanding issues to be discussed and agreed between us prior to the application being submitted. As you see from our comments below we still have a number of outstanding issues relating to the HRA screening report and we consider that these need to be further discussed, and hopefully resolved, before you submit your application...

[W]e note that the windfarm cannot operate without the construction of a new grid connection and the screening report identifies two potential routes for this connection. It appears that the potential locations for the grid connection have not been agreed or discussed with the grid provider and no planning application submitted by them for the proposed corridors. The lack of any agreement between yourselves and the grid provider suggests that there is a reasonable likelihood that the potential grid connection corridors may be amended...

In our letter of 8 July 2013 in response to your Section 42 consultation we provided advice on the HRA including information which we considered should be included in the screening report. We note that some of this requested information is still outstanding.

111. An Annex 1 attached to that advice included NRW's Comments on HRA Screening Report included: [Emphasis added]

2. 1.1 We advise that you also have reference to:

Managing Natura 2000 sites the provisions of Article 6 of the Habitats Directive 92/43/EEC " at: http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf and guidance on Article 6(4) updated in 2007 at: http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf.

We also refer you to our own guidance note "Assessing Projects under the Habitats Directive: Guidance for Competent Authorities" and a copy of this is attached to this letter.

3. 1.1 The report refers to an agreement with NRW that a 10km distance should be used to identify which N2K sites were relevant to the HRA. Information is required on when this was agreed with NRW. Where the NSIP application makes reference to matters being agreed with NRW then we suggest that the date of the correspondence is included...

The grid connection is included in the project description in section 4 and two potential grid connection corridors are suggested. The status of these corridors is unclear and there appears to be a reasonable likelihood that they will be amended. SPEN (the district network operator) have undertake no consultation on the corridors and they do not appear to have undertaken any routing work to have identified the corridors. Further information is required on how these corridors have been identified.

4. 3.1.2 The scope of the screening report is described as including consideration of whether any further HRAs of the project will be required in addition to that to be undertaken for the Development Consent Order. However this information has not been included in the screening report. It would be helpful to include a www.naturalresourceswales.gov.uk www.cyfoethnaturiolcymru.gov.uk Page 5 of 9 list of other consents required by the project in addition to the Development Consent Order.

112. The advice from NRW itself followed a meeting between the Applicant and PINS on 10th December 2013 (i.e. after publication of Version 5 of Advice Note 10 and page 8). The Meeting Note records as follows: [Emphasis added] **Appendix-NRW-ISHL-5(f)**

Environmental Statement, Habitats Regulations Assessment (HRA) Report and the draft Development Consent Order

The Inspectorate explained that a high-level review had been made following receipt of the draft ES, HRA and DCO, and offered the following advice applicable to all of these documents:

- ... *The Inspectorate also noted that the proposed SP Manweb grid connection would not form part of the proposed DCO application for the wind farm. However, it was unclear whether this grid connection had been considered and assessed in both the ES and HRA Report. The Inspectorate expects the proposed grid connection to be considered within the cumulative and in combination assessment within the ES and HRA Report, respectively, and for a plan to be provided identifying the potential location of this grid connection; ...*

Comments specific to the draft HRA:

- *The draft HRA records that a 10km buffer was chosen to identify sites which may be affected by the proposed development. However, no justification is provided for selection of this distance. This should be clarified in the HRA, including whether it has been agreed with the relevant statutory nature conservation bodies (SNCB); ...*
- *In combination assessment – It is unclear whether the proposed SP Manweb grid connection has been considered in the in combination assessment. This should be assessed within the in combination assessment. The HRA Report should clearly identify the criteria used to identify the ‘other plans and projects’ and whether this has been discussed and agreed with the relevant SNCB. The applicant may wish to consider the criteria identified within The Planning Inspectorate’s Advice Note 10: HRA² on page 8. The plans and projects which have been considered in the in combination assessment, including those which have been screened out and not taken forward into the assessment, should be listed in the HRA Report. A plan showing the location of these ‘other plans and projects’ relating to the proposed development should also be provided within the HRA Report. The potential for the proposed development to have a ‘likely significant effect on a European site...(either alone or in combination with other plans and projects’ should be assessed for all European sites screened into the HRA process; ...*

113. In fact, the 10km distance in relation to *Grid Connection* has never been agreed with NRW. The explanation for the 10km distance appears at paragraph 40 of the MYG HRA Screening Report **Document MYG-AD-9:** [Emphasis added]

Sites falling outside this 10km buffer were deemed to not be relevant to this proposal. This is because there can be no causal link between sites at distances greater than 10km from the proposal itself. This is the case both for the proposal in isolation and the proposal itself. Therefore, a 10km buffer of the site was generated through the use of GIS and all European sites within this buffer were interrogated.

114. NRW submits that:

- a) it is evident that the 10km buffer concerned matters other than Grid Connection because, as the Applicant stated orally at the first ISH draft DCO, it would be “absurd” to suggest that the

authorised development could operate without a Grid Connection. Such a connection is self-evidently necessary for the authorised development to actually export electricity to the Grid;

b) PINS advised the Applicant to:

- i) consider Advice Note 10, page 8, and this guidance advised of the scope of “plan or project” as embracing a registered NSIP, here, the Mid-Wales Grid Connection Project by National Grid;
- ii) seek NRW’s advice on the scope of the HRA in combination effects of Grid Connection. The Applicant did seek NRW’s advice and NRW advised as aforesaid. NRW further submits that it is surprising that the Applicant chose to ignore that advice and exclude from account in its HRASR consideration of the Mid-Wales Grid Connection Project which it simultaneously accepts as necessary to export electricity to the Grid (and thereby has a necessary causal link with this Application.

115. Importantly, shortly before the Applicant’s HRA Scoping Report dated July 2014, on 4th July 2014, the Planning Inspectorate had also issued a Scoping Opinion Report on the Proposed Mid Wales Electricity Connection (National Grid) proposal. This document was then also published on the National Infrastructure website.

See <http://infrastructure.planningportal.gov.uk/projects/wales/mid-wales-electricity-connection-n-grid/?ipcsection=docs>

116. The PINS documentation has been provided to the ISH on Grid Connection in this Application. The consultees in Appendix 1 included NRW. The Opinion stated: [Emphasis added]

3.76 The SoS recommends that the potential impact of electromagnetic fields on bats should be considered in the ES.

117. The SoS recommendations were informed by consultation responses. These included, in particular as to the potential impact of electromagnetic fields on bats, that from NRW in the Appendices to that Report. NRW’s Annex 1: NRW’s Detailed Advice on Scoping Report included as follows. At page 14: [Emphasis added]

Bats (including SAC)

81. *Bat surveys should be undertaken in line with Bat Survey Good Practice Guidelines, Bat Conservation Trust, 2nd Edition 2012.*
82. *The Tanat and Vyrnwy Bat Sites SAC is designated for lesser horseshoe bats and the conservation objectives for the site are contained in the core management plan for the site⁴. The developer should note that we are currently revising the conservation objectives for the SAC and we advise early discussion with us on the likely changes to the objectives.*

83. Six bat roosts are designated as part of the Tanat and Vyrnwy SAC. However the assessment should consider that there are further roosts that have been discovered since the designation of the SAC, some of which are designated as SSSIs, which are in close proximity to the grid line route. The assessment will need to take these roosts into account and consider their importance in the favourable conservation status of the SAC. A scope for the HRA should be discussed and agreed with NRW as early as possible. ...
85. The ES and HRA will need to consider the potential for bats to be impacted by Electro Magnetic Fields (EMF).
86. NRW has had some discussion with the applicant regarding their bat surveys with some discussion on-going. We note the statement in section 8.4.61 that survey methodology may need to evolve as the surveys progress and we recommend that the applicant continues to discuss any changes with us.
87. It is not clear how much fragmentation of habitat will arise in the overhead sections as we are unclear how much vegetation would need to be removed on a temporary and permanent basis and the delay before reinstatement of disturbed habitats can occur. We query whether bat densities are likely to be lower in the overhead section of the line compared to the undergrounded section given the similar habitat.
88. Surveys involve a mixture of static detectors and activity surveys. The activity surveys are likely to provide limited data on numbers of bats. Static detectors will provide numbers but differentiation between individual bats will open to interpretation. Where known roosts are present close to the line it may be useful to undertake targeted surveys in these areas.
89. With regard to the activity surveys the transects follow the line of the current route line. This involves transect routes cutting perpendicular to hedges and tree belts and across fields. This means the surveys will generally only spend a short time within the hedges where bats are most likely to be present and a relatively large amount of time in open fields where densities of bats are likely to be lower. The important flight routes areas are therefore relatively under represented. The transect also run across hedges etc and we query how surveyors are crossing these while on the transect.

[see figure showing aerial photograph of proposed Grid Connection route]

The above figures shows the transect route and line route in green along with the numbered listening points. The belt of trees between listening points 56 and 57 may potentially be impacted by the scheme and is generally avoided as part of the transect. We would suggest that an approach which involves a transect route similar to the orange line could potentially collect better data on important commuting routes. Bigger species of bats foraging over the fields would still be picked up on this route.

90. We recognise that the issue of surveying trees for bats roosts is difficult. We suggest that further discussion is required on National Grid's approach to survey and mitigation given the large number of trees that may require felling.
118. NRW also relied on the research on EMF at **Appendix-NRW-ISHL-5(g)** in so advising and advised, as it was entitled, within the wide margin of its specialist expertise.
119. NRW provided further advice in October and December 2014 that the HRASR ought not to exclude from account the Mid Wales Grid Connection: [Emphasis added]

F1 Grid Connection There is uncertainty regarding the status of two grid connection options presented by the applicant in the ES as they do not appear to have been identified using any

nationally recognised routing process. The HRASR does not consider the in-combination effects of the grid connection and the ES does not consider the cumulative effects of the grid connection with the proposal and other planned grid connections and windfarms in the SSAs. There is uncertainty as to whether National Grid and SPEN have the capacity to connect the proposal to their proposed new Mid Wales Connection network...

F1.7. The cumulative impacts of the grid connection and windfarm development to which this DCO relates have not been assessed as required under the EIA Regulations. In the HRASR the grid connection is not considered as part of the in-combination assessment.

120. NRW has previously provided documentation showing the physical link of the Application's necessary grid connection to and through the Mid-Wales Grid Connection. It has also provided a composite A3 illustrative coloured plan at a large scale to show this connection. See attached at **Appendix-NRW-ISHL-5(h)**.

121. NRW submits as follows:

- a) The Applicant does not dissent from the PINS Guidance on HRA;
- b) The Applicant was advised by PINS and NRW to address page 8 of Advice Note 10;
- c) Page 8 identifies the registration of a plan or project with PINS as satisfying the criteria for "plan or project" as regards consideration of "in-combination" effects;
- d) The Secretary of State has already accepted there he cannot exclude from account a likely significant effect on bats as a result of the Mid-Wales Grid Connection Project;
- e) National Grid are currently considering mitigation but have not to date resolved this;
- f) The Applicant accepts that it requires grid connection through Mid-Wales if it is to be capable of exporting electricity to the Grid and so its authorised development may have utility;
- g) The Applicant's suggestion at the ISHL Grid Connection Item that it was not reasonable for it to undertake certain steps in its Application is misplaced. The condition "reasonable" applies to that which the competent authority may require of the Applicant and not the other way around. Further, the Advice Note 10 terms are clearly expressed as to the relevant burden and thereby it cannot be said that it is unreasonable for the Applicant to execute in-combination assessment of the plan or project (or to have awaited the assessment of another);
- h) NRW acted reasonably in giving notice to the Applicant (and consistent reminders over time to address Grid Connection in its HRASR);
- i) It is reasonable for the Applicant to bear the consequences of its chosen approach because:
 - i) The Advice Note 10 states that the requirements (and so their burdens) fall on the Applicant and no one else;

- ii) EN-1 provides for Grid Connection matters and the Applicant does not dispute this guidance.

EN-1 Grid Connection Policy

122. EN-1 includes as follows: [Emphasis added]

- 4.9.1 The connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend generation plant. In the market system, it is for the applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The applicant will liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional Distribution Network Operator (DNO) to secure a grid connection. It may be the case that the applicant has not received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application, although it is likely to have applied for one and discussed it with them. This is a commercial risk the applicant may wish to take for a variety of reasons, although the IPC will want to be satisfied that there is no obvious reason why a grid connection would not be possible.*
- 4.9.2 The Planning Act 2008 aims to create a holistic planning regime so that the cumulative effect of different elements of the same project can be considered together. The Government therefore envisages that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application to the IPC or in separate applications submitted in tandem which have been prepared in an integrated way. However this may not always be possible, nor the best course in terms of delivery of the project in a timely way, as different aspects may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls). So the level of information available on the different elements may vary. In some cases applicant(s) may therefore decide to put in an application that seeks consent only for one element but contains some information on the second. Where this is the case, the applicant should explain the reasons for the separate application.*

123. NRW submits that:

- a) The Secretary of State cannot presently know the outcome of National Grid's approach to mitigation because it has not concluded those matters;
- b) Article 6(3), Habitat's Directive and Regulation 61(1), Habitats Regulations preclude a grant of consent for the Application at this time because each requires that "before" consent is actually granted the relevant decisionmaker be satisfied that he can exclude from account the potential for a likely significant effect;
- c) Currently, the Secretary of State has determined that he cannot exclude such a potential significant effect from EMF engendered by National Grid's Mid-Wales Grid Connection overhead lines on bats by reason of the actual overlap between those parts of the line and the foraging areas of those bats;

- d) Consistent with his current understanding, the Secretary of State could not be differently satisfied about the same circumstances merely because a proposal to the south of that situation proposes to physically connect to it;
- e) As it has previously advised, an HRA of the in-combination effect of the Mid-Wales Grid Connection remains required (or necessary) if the Application is to be granted consent;
- f) Alternatively, it is a matter for the Applicant to consider whether a requirement may address this situation. See **Appendix-NRW-ISHL-5(h)** for the Secretary of State's approach at Triton Knoll, paragraphs 3.14-3.20 to not imposing TCPA 1990 'Grampian-style' requirements as to Grid Connection;
- g) Development consent cannot currently be granted other than in breach of the Habitats' Directive and domestic regulations. Section 104(4)-(6), Planning Act 2008 bars a grant.

ISH draft DCO.

124. NRW attach a tracked changed draft of the draft amended DCO dated 15th March 2015 with comments explaining the reasoning for the changes proposed by it. See **Appendix-NRW-ISHD-1**.