



Awel y Môr Offshore Wind Farm

Applicant's Response to CAH and ISH4 Actions

Deadline 7

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1 Applicant's Response to CAH Actions

Table 1: Table of actions from CAH and the Applicant's responses.

DIRECTED TO	TO BE PROVIDED BY	ACTION	APPLICANT'S RESPONSE
Applicant	Deadline 7 08 March 2023	Re-drafting of Article 27 (8) - CA of rights over TP land issue	Article 27(8) has been amended and the ability to acquire rights in Schedule 7 land has been removed from the draft DCO (Document 7.6 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Negotiations document [REP6-016] updated to reflect only Network Rail Infrastructure Limited and Dŵr Cymru/Welsh Water (DC/WW) as subject to s127 of PA2008.	The negotiations document has been updated (Document 7.9 of the Applicant's Deadline 7 submission) to reflect the fact that s127 of the PA 2008 is only engaged in relation to Network Rail Infrastructure Limited and Dŵr Cymru/Welsh Water.
Applicant	Deadline 7 08 March 2023	BoR to be updated to reflect Plot 285 and Plot 331 interests.	The Applicant has updated the Book of Reference to reflect the updated occupancy details of these plots (Document 7.8 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Update CA schedule [REP6-018] to include various discussions between parties.	The CA Schedule has been updated (Document 7.10 of the Applicant's Deadline 7 submission) to align the negotiations document.
Applicant	Deadline 7 08 March 2023	Negotiations document to be updated to include entry 28 of the CA schedule and CA schedule amended to reflect status of entry 29.	The negotiations document has been updated (Document 7.9 of the Applicant's Deadline 7 submission) to include The Bodrhyddan Farming Company Limited. The CA schedule has been updated (Document 7.10 of the Applicant's Deadline 7 submission) to list the trustees of the Bodrhyddan Estate Maintenance Fund.
Applicant	Deadline 7 08 March 2023 and Deadline 8 15 March 2023	Summary negotiations position document for North Hoyle Wind Farm Ltd and Rhyl Flats Wind Farm Ltd.	The Applicant has provided an update on the status of agreements with North Hoyle and Rhyl Flats at Document 7.29 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	CA schedule para 30 to identify Welsh Government entities	The CA Schedule has been updated at Document 7.10 of the Applicant's Deadline 7 submission to show the 3 entities of the Welsh Government.

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Applicant	Deadline 7 08 March 2023	CA schedule and negotiations document to be updated to reflect any required changes.	The CA Schedule and negotiations documents have been updated at Deadline 7 (Documents 7.10 and 7.9 of the Applicant's Deadline 7 submission, respectively) to reflect any necessary updates.
Applicant	Deadline 7 08 March 2023	Statement of Reasons - expand on reasons for CA of plot 416.	Additional wording has been included in the revised Statement of Reasons (Document 7.18 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Written response to blight concerns raised at D6.	The Applicant has provided a response to Ms Evans and Mr Griffiths in Comments on Submissions Received at Deadline 6 (Document 7.3 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Written response to Mr Bibby's points raised (include the well, enabling works and indemnity, EL ref regarding agricultural land classification).	<p>Mr Bibby's reference to enabling works and indemnity provisions relate to ongoing discussions in respect of the voluntary agreements affecting Faenol Bropor. While these specific provisions are continuing to be negotiated between the parties and it is expected that an agreed position can be reached, the Applicant would note that both provisions are typically found in land agreements relating to a development of this nature.</p> <p>The Applicant notes the concerns around the possible disruption to the well located on land proposed to be acquired by the Applicant and would reiterate that this water source is not potable. As noted by Mr Bibby during the Compulsory Acquisition Hearing, the water supply is used for the purpose of livestock husbandry only. In so far as providing access to the well for the purposes of maintenance, the Heads of Terms which were noted to be in an advanced form have an express provision to allow the owners of Faenol Bropor or those authorised by them to access the land proposed to be purchased by the Applicant in order to maintain the well. There are further provisions in the draft agreement which relate expressly to the protection of the well and the subsequent flow of water from it to Faenol Bropor. Given the relatively limited amount of information relating to the source of the well and noting that the source is likely to be subject to the influence of the actions of third parties on land outside the control and ownership of the Applicant, the Applicant is unable to provide an outright commitment to the maintenance of the well. The Applicant will however ensure that reasonable endeavours are taken to ensure the source remains intact in so far as it is able to do so within the confines of the land to be acquired.</p> <p>During the Compulsory Acquisition Hearing on 28 February 2023 the Applicant mistakenly suggested the Agricultural Land Classification (ALC) Survey that has been undertaken for the substation site had been submitted to the Examination, however, this is not correct.</p>

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			<p>The ALC survey has been submitted at Document 7.20 of the Applicant's Deadline 7 submission.</p> <p>Mr Bibby's raised concern that the landowner would not have an opportunity to discuss the final planting species mix that would be approved by DCC through agreement of the final LEMP. The Applicant confirms that landowners will be consulted upon a 'Design' guide that will set out the emerging substation design (including the parameters set out in the Design Principles Document, an updated version of which is submitted at Document 7.16 of the Applicant's Deadline 7 submission).</p> <p>With regards to Mr Bibby's question around whether the long term monitoring and management measures that would be included in the final Landscape Ecology Management Plan (LEMP), the Applicant confirms that the oLEMP was updated at Deadline 4 (REP4-011) to include a commitment for long term maintenance and management proposals to be included in the final LEMP (Paragraphs 36 and 37) that will include details on the type and timescales of maintenance of landscape mitigation to be undertaken during the operational lifetime of AyM.</p> <p>Mr Bibby asked whether the oLEMP also includes decommissioning. The Applicant confirms that proposals regarding decommissioning is set out in paragraph 49 of the oLEMP (The latest version of which can be found as Document 7.15 of the Applicant's Deadline 7 submission).</p>
Applicant	Deadline 7 08 March 2023	Written response to Mr Davies' oral submissions.	Mr Davies raised a number of points to which the Applicant has previously provided a response to in Appendix A of the Applicant's Response to ISH2 and ISH3 Actions (REP4-003). With regard to Mr Davies' comments on the matter of blight, the Applicant has provided a response to another affected person on this topic in Table 1 of the Comments on Submissions Received at Deadline 6 (Document 7.3 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Joint statement with SP Manweb or confirmation if objection will be withdrawn.	A joint position statement has been submitted at Document 7.28 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	DC/WW protective provisions agreed and incorporated into the dDCO.	The Applicant intends to include the agreed protective provisions in the final draft DCO submitted at Deadline 8. The Applicant and Dwr Cymru are progressing with a joint statement to confirm the agreed position and also plan to submit this at Deadline 8.

DIRECTED TO	TO BE PROVIDED BY	ACTION	APPLICANT'S RESPONSE
Applicant	Deadline 7 08 March 2023 and Deadline 8 15 March 2023	Provide discussion update relating to The Crown Estate.	The latest update on discussions with The Crown Estate is set out in the Update on Negotiation with Landowners, Occupiers and Statutory Undertakers and Other Utilities (Document 7.9 of the Applicant's Deadline submission).
Applicant	Deadline 7 08 March 2023	Funding Statement - provide accounts for the other relevant entities of Awel y Môr Offshore Wind Farm Limited.	The Funding Statement has been updated with this information in Document 7.17 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	Funding statement - RWE AG has total assets of £220 billion and this is shown on the Balance Sheet at the end of the Interim Statement at Appendix 1. However, can you please explain the At a Glance table at the start of Appendix 1 which suggests a net debt of £360 million and any implications of this for securing funding for the project, including for CA and compensation costs?	The "at a glance" table sets out the key figures from the RWE accounts. The net debt figure shown in the table compares <i>only</i> liquid assets to short-term <i>and</i> long-term debt. The €220 Billion assets shown later on page 20, and included in the report, is <i>everything</i> of value that RWE owns. The Applicant included assets in the funding statement as resource to the company that it expects future benefit from. The sheer size of RWE's total assets in combination with its stable investment grade rating show that RWE is financially stable and will have no problem financing the development of AyM.
Applicant	Deadline 7 08 March 2023	Funding Statement - Appendix 2 - include in the clean version the Property Cost Estimate Table totals to align with tracked version.	These discrepancies have been corrected in the updated Funding Statement submitted at Document 7.17 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	Funding Statement - update para 37 (and Statement of Reasons para 169) regarding updated project costs.	This amendment has been made in the updated Funding Statement submitted at Document 7.17 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	Article 31 - confirm if Article 26 and 30 needs to be included as they both refer to compensation.	Articles 26 and 30 have been added to Article 31 in the dDCO (Document 7.6 of the Applicant's Deadline 7 submission).

2 Applicant's Response to ISH4 Actions

Table 2: Table of actions from ISH4 and the Applicant's responses.

DIRECTED TO	TO BE PROVIDED BY	ACTION	APPLICANT'S RESPONSE
Applicant	Deadline 7 08 March 2023	Provide a commentary on the recently published "Nationally Significant Infrastructure: Action Plan for reforms to the planning process" (23 February 2023).	The Applicant will provide a note on the Action Plan as part of its Deadline 8 submissions.
Applicant	Deadline 7 08 March 2023	Provide a note on potential opportunities in the project that will deliver offshore environmental net gain.	The Applicant will provide a note on offshore environmental net gain at Deadline 8.
Applicant	Deadline 7 08 March 2023	Provide a note on the INSPIRE modelling process including initial parameters and actual wind turbine data and how this relates to the size and scale of Awel y Môr.	<p>Details of the INSPIRE modelling process are provided in the Underwater Noise Technical Report provided in the ES at APP-105, including the modelling parameters used to predict underwater noise levels generated by piling during construction of AyM.</p> <p>Section 4 of APP-105 describes the modelling methodology, and Section 4.1 goes on to detail how input parameters such as pile size, hammer energy and piling profile (soft-start duration, ramp-up profile and strike rate) are accounted for in the model using piling logs and underwater noise measurements from previously constructed projects. The model extrapolates its predictions based on these input parameters. Subacoustech hold, and have analysed, underwater noise monitoring data from projects that have used up to 8 m diameter piles and using up to 4,000 kJ hammer energy. There is therefore a substantial quantity of data showing the trends in terms of how increasing project parameters affects noise outputs. These trends have been factored into the INSPIRE noise model to predict the noise outputs from parameters which have not yet been directly recorded, which is necessary as trends towards larger offshore wind projects with larger infrastructure continue.</p> <p>The INSPIRE model has been used to conservatively predict underwater noise levels in a significant number of the offshore wind projects around the UK. During that time, there has generally been an increase in the size and scale of offshore wind deployments meaning that it has been common place for the modelling to represent pile size and or hammer energies above those for which there is empirical monitoring data for. Monitoring of underwater noise on past projects has been used to validate the INSPIRE model predictions as that trend has been taking place over this time. Therefore there is high confidence that the model is capable of predicting noise levels for projects of a greater size and scale when compared to the inputted monitoring data that the model is</p>

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			<p>based on. Furthermore, the INSPIRE model is continually updated when new data from monitoring of offshore wind farm piling becomes available, and therefore the performance of the model is based upon the best available empirical data.</p> <p>The use of actual recorded data from previously constructed projects, combined with the worst-case assumptions in parameter selection, means that modelled results are precautionary and high confidence can be attributed to them. It is important to note that the parameters proposed are in line with other recent offshore wind farm applications (such as Hornsea Project Four and Norfolk Boreas for example) and therefore, in that sense, there is nothing unique or unusual about the predictive work undertaken on AyM to inform the assessments.</p> <p>It is also important to note that for the purposes of the ES, a conservative worst-case set of piling parameters has been assumed. Once the project design has been finalised in the post-consent phase, including the final piling profile, size and location, re-modelling of underwater noise will be undertaken (to ensure that the Marine Mammal Mitigation Protocol (MMMP) is designed around the actual final scheme design and that this remains within the predictions made within the ES. Underwater noise monitoring will be used both to validate these predictions, and to ensure that mitigation agreed in the final MMMP are sufficient. Monitoring results would be analysed and reported to NRW within a pre-agreed timetable.</p>
Applicant	Deadline 7 08 March 2023	Confirm if the Outline Marine Mammal Mitigation protocol is incorrectly included in schedule 13 of the dDCO (Ref. 6.4.7.2).	The outline Marine Mammal Mitigation Protocol is included within Schedule 13 as it formed an Annex to the Marine Mammals Chapter (Volume 2 Chapter 7; AS-026) of the ES. Although this document is not otherwise referred to in the dDCO and will be secured through the marine licence, the Applicant considers it should remain in Schedule 13 for this reason.
Applicant	Deadline 7 08 March 2023	Highlight which document and specific paragraph defines the reasonable worst-case scenario for UXO	It is important to note that whilst a worst-case for Unexploded Ordnance (UXO) clearance has been assessed for the purposes of the AyM ES, it is not an activity that the Applicant is seeking to consent within this DCO application, or its current Marine Licence application to NRW. AyM lies in an area which is considered to be low risk for the presence of UXO when compared to areas, such as the southern North Sea which saw greater action during WWI and WWII. It is therefore possible that UXO clearance will not be required for AyM, which is another reason for not seeking to licence this activity at this stage. Notwithstanding this, a highly conservative estimate of up to 10 items of UXO requiring clearance has been assumed as a reasonable worst-case for AyM in the ES (see Section 1.6.4 of the Offshore Project Description chapter of the ES (APP-047)).

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			<p>Whilst a reasonable worst-case has been assumed in the Applicant's ES, it is not possible to know the precise nature and locations of any potential UXO items at this stage, without first undertaking detailed pre-construction surveys. This is a typical approach for offshore wind farm projects in the UK.</p> <p>Section 1.6.4 of the Offshore Project Description chapter of the ES (APP-047) describes the Applicant's approach to, and Maximum Design Envelope (MDS) for UXO clearance. Underwater noise generated by UXO clearance is assessed in paragraphs 196 – 216 of the Marine Mammals chapter of the ES (AS-026) and paragraphs 265 – 271 of the Fish and Shellfish chapter of the ES (APP-052). Effects of UXO clearance have also been assessed in the Report to Inform Appropriate Assessment (RIAA) (APP-027) in the context of marine mammals and migratory fish.</p> <p>Post-consent, the Applicant will undertake detailed site investigation surveys (including magnetometer surveys) to identify potential items of UXO that require further investigation. Specialist contractors would evaluate the survey results to determine which potential items of UXO require inspection, including (for example) through the use of underwater Remotely Operated Vehicles (ROVs). This will determine the nature, type, size and condition of UXO items and will inform how they should be dealt with, including detonation if removal is not a viable solution. Clearance of UXO will be subject to a separate Marine Licence application to NRW, and conditions for mitigation (such as a UXO-specific MMMP) will be agreed with NRW at that time.</p>
Applicant	Deadline 7 08 March 2023	To update the dDCO based on your review of the requirements.	The necessary updates have been included in the dDCO (Document 7.6 of the Applicant's Deadline 7 submission) as listed in the Schedule of Changes to the dDCO (Document 7.6.1 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	Provide a note on pre-commencement works defined in the offshore project description and their coverage in the marine licence.	<p>The Offshore Project Description in the Environmental Statement provided for the DCO and marine licence applications (APP-047) includes a definition of pre-construction works at section 1.6. This includes pre-construction surveys, seabed preparation works, sandwave clearance, UXO survey (not clearance), boulder clearance and pre-lay grapnel runs. All of these are typical offshore pre-construction works that can be excluded from the definition of commencement in a marine licence.</p> <p>NRW is responsible for the drafting of the AyM marine licence (ML) and the Applicant anticipates further discussion regarding the undertaking of these pre-construction activities and how they relate to the commencement of the licensed activities as defined in the ML.</p>

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Applicant	Deadline 7 08 March 2023	To consider whether the Outline Offshore Piling Noise Monitoring Plan should be added to Schedule 13 and to add the Crown Land Plans to the Schedule and to the relevant definitions.	The Outline Offshore Piling Noise Monitoring Plan has been added to Article 2 and Schedule 13 of the dDCO (Document 7.6 of the Applicant's Deadline 7 submission) as it is referred to in Schedule 9 Part 8 (for the protection of Conwy County Borough Council) of the dDCO. The Crown Land Plans are not referred to in the dDCO and therefore they have not been added.
Applicant	Deadline 7 08 March 2023	Add Work No 31 to R16 in addition to Work No 31A given the works involved as set out in the dDCO include drainage and ponds	Work No 31 has been added to R16 in the dDCO (Document 7.6 of the Applicant's Deadline 7 submission).
Applicant	Deadline 7 08 March 2023	To confirm whether reference to agreements with DCC as set out within the outline Construction Code of Practice with respect to Saturday working and 24 hr HDD is correct as the dDCO refers to notification.	The Applicant has amended the Code of Construction Practice to align with the DCO Requirement. An updated version of the CoCP is provided at Document 7.11 of the Applicant's Deadline 7 submission.
Applicant	Deadline 7 08 March 2023	To review the Schedule of Mitigation and Monitoring in respect of Requirement 20 and to confirm whether row 487 needs to be updated.	The Schedule of Mitigation and Monitoring submitted at Document 7.19 of the Applicant's Deadline 7 submission has been updated at Row 487 to specify Requirement 20 as mitigation. Whilst this is not required in order to mitigate against significant adverse effects, it has been described as mitigation, or a commitment, in terms of providing further detail on securing positive benefits to employment and the economy in North Wales, and Wales more widely as concluded in the Socio-economics chapter of the ES (AS-034).
Applicant	Deadline 7 08 March 2023	To forward details of the assessment of proposed accesses to Glascoed Road to Mr Davies.	The Applicant can confirm that Mr Davies has been sent the relevant information by email and by post.
Applicant	Deadline 7 08 March 2023	To review Schedule 11 of the dDCO in respect of fees to account for when requirements are discharged in part.	At the request of the Examining Authority, wording has been added to Schedule 11 of the dDCO (Document 7.6 of the Applicant's Deadline 7 submission) to make clear that requirements may be discharged in part.
Applicant	Deadline 7 08 March 2023	To provide copy of the wording of the Morlais tidal scheme requirement in respect to the potential landscape section 106 requirement, including consideration of the relevance and applicability of	The Applicant has provided a copy of this requirement and a consideration of the relevant planning guidance in Appendix A of this document.

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		Planning Practice Guidance to the issue and relevant Welsh guidance if necessary.	
Applicant	Deadline 7 08 March 2023	To review and confirm whether the outline Skills and Employment Strategy is proposed to sit outside the planning process and if so, to provide some commentary on this.	<p>The Applicant has reviewed the outline Skills and Employment Strategy (oSES) (REP4-007) and can confirm that it is relevant to the planning process. Whilst it is not required to mitigate against significant adverse effects, it is a mitigation measure in terms of the commitment to provide further detail on, and secure, positive benefits to the North Wales (and Wales more widely) economy and employment as described in the socio-economics chapter of the ES (AS-034). It has been provided by the Applicant in direct response to requests from Denbighshire County Council in paragraphs 13.3. and 13.4 of its Local Impact Report (REP1-056) and from Isle of Anglesey County Council in its Written Representation (REP1-066).</p> <p>Paragraph 40 of the oSES refers to the community benefits consultation, a separate exercise to the consultation undertaken to inform the oSES, and undertaken by the community benefits team in late 2021/2022, which does sit outside the planning process.</p>

Appendix A: Note on Landscape Enhancement

1 INTRODUCTION

- 1.1 This note has been prepared by the Applicant in response to a request from the Examining Authority (ExA) at Issue Specific Hearing (ISH) 4 on matters relating to offshore environmental effects and the draft Development Consent Order. It provides an overview of the Applicant's proposals for landscape enhancement, an explanation of the approach taken in the Welsh Government's Transport and Works Act decision for the Morlais tidal stream energy project and how the proposed approach is consistent with relevant legal and policy requirements.
- 1.2 As mentioned in the update provided by the Applicant at Deadline 6 (REP6-022), since ISH 2 the Applicant has been liaising with Natural Resources Wales (NRW), Eryri National Park (ENP) (formerly Snowdonia National Park), Isle of Anglesey County Council (IoACC), Conwy County Borough Council (CBC), Denbighshire County Council (DCC) and other Interested Parties, regarding a potential landscape enhancement fund.
- 1.3 The Applicant has proposed a section 106 agreement between the Applicant and DCC with the approval of the other parties listed above, providing funds through the operational lifetime of the Awel y Mor project for enhancement projects within areas of Anglesey Area of Outstanding Natural Beauty (AONB), ENP and Great Orme Heritage Coast, where landscape and visual-related significant effects from the project may occur.

2 LANDSCAPE AND SEASCAPE EFFECTS

- 2.1 NPS EN-1 provides that "*Virtually all nationally significant energy infrastructure projects will have effects on the landscape*" (5.9.8), and that in considering applications, regard should be had to "*any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*" (5.9.9). The Applicant has set out a full assessment of the potential seascape, landscape and visual effects of the proposed development and has described how mitigation has been applied through the design iteration process to minimise those effects where possible. In respect of designated landscapes, paragraph 5.9.12 states the "*duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational, and other relevant constraints.*" Paragraph 4.5.1 of EN-1 also recognises that "*the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.*"
- 2.2 In summary, the Environmental Statement (ES) assesses that:
- (a) There would be significant adverse effects on three of the 14 special qualities and the natural beauty of the Isle of Anglesey AONB, however these effects are not considered to affect the overall integrity of the AONB or its inherent natural beauty;
 - (b) There may be adverse effects on the Eryri National Park's special qualities of Diverse Landscapes and Tranquillity & Solitude – Peaceful Areas and Peacefulness, but such effects are not considered to be significant and such effects are not considered to affect the overall integrity of the SNP or its inherent natural beauty; and
 - (c) There would be an effect on views from the Great Orme as part of its context, which also includes many other components including operational offshore wind farms and a large expanse of open sea. The effects of AyM on the character of the Great Orme would not physically change the inherent pattern of elements but

would occur as part of its context, which already contains many development features.

- 2.3 The Applicant has applied the mitigation hierarchy by seeking to avoid significant adverse impacts, and where these cannot be avoided to mitigate them. As set out in the ES Site Selection and Alternatives chapter (APP-044), the Applicant has mitigated the impacts on seascape, landscape and visual effects resulting from the wind turbine array in so far as is possible while maintaining a viable project, including:
- (a) Reducing the proposed array area from 107km² at scoping to 78km²;
 - (b) Removing turbines from the western extent of the Area for Lease;
 - (c) Reducing the maximum number of turbines from 91 to 50; and
 - (d) Proposing the minimum possible array area with the turbines as closely spaced as is technically feasible to reduce the horizontal spread in views.
- 2.4 NRW has submitted that a substantial reduction in the size and scale of AyM would be needed to reduce the significant seascape and landscape visual effects. The Applicant does not consider that a reduced number of turbines would be an economically viable and deliverable project, and that turbines of the size envisaged by NRW will not be available in the near future. Accordingly, in the case of landscape, it is not possible to completely mitigate the impacts and some adverse impacts remain (as anticipated by NPS EN-1). The Applicant has therefore been discussing the next stage of the hierarchy, compensation, with the relevant parties in the form of a landscape enhancement scheme.
- 2.5 The Applicant is engaging with the relevant interested parties (listed above) to seek to agree the scope of the landscape enhancement scheme. The objective of that scheme would be to compensate for the adverse impacts of the proposal by funding improvements of onshore landscape features – this could include enhancing landscape characteristics, undertaking landscape restoration and/ or improving public access and interpretative resources (particularly where they contribute to identified special qualities and local distinctiveness)
- 2.6 NPS EN-1 states that the decision-maker should consider any relevant positive provisions the developer has made or is proposing to make to mitigate impacts including through planning obligations (5.12.3 and 5.12.8).

3 MORLAIS CONDITION

- 3.1 The Morlais tidal stream energy project is a scheme for a tidal energy test and demonstration array. Although it was consented under the Transport and Works Act 1992, not the Planning Act 2008, it is considered relevant as it also considered compensation for landscape impacts, affecting the Anglesey AONB.
- 3.2 In the Morlais application inquiry, it was not contested that some views in the AONB, including those of the seascape and the AONB's special qualities, would be impacted by the works as the installation of the array would inevitably change the view into and out of the coastal landscape areas. The IoACC's position was that these impacts would have a significant adverse effect on the Anglesey AONB and the Holy Mountain Heritage Coast, in particular. The IoACC accepted that the applicant in Morlais had done what it could to mitigate these effects through design mitigation and placement of the devices offshore, and through proposed landscaping around the onshore infrastructure. However even with that designed-in mitigation, the IoACC submitted that there remained a significant adverse impact on some parts of the AONB and Holy Mountain Heritage Coast.
- 3.3 As the Inspector in Morlais found that further mitigation was not practical, it was necessary to consider whether the provision of compensation would be appropriate to off-set the harm which would be caused by the project. The IoACC's position was that such compensation would be appropriate.

3.4 The Inspector recommended, and Welsh Ministers determined to impose, condition 23 of the Morlais deemed planning permission, which secures completion of a scheme securing landscape enhancement funding. Post-consent, the scheme has been prepared in the form of a section 106 planning obligation tied to the onshore substation site in order to ensure ongoing enforceability.

3.5 Condition 23 of the Morlais deemed planning permission states:

No development shall take place until a scheme for the provision of landscape compensation has been submitted to and approved in writing by the LPA. The scheme shall set out appropriate measures to compensate for the impact of the development on the landscape and seascape character areas identified in chapter 24 of the Environmental Statement (Seascape, Landscape and Visual Impact Assessment Volume 1) dated July 2019 as likely to experience significant effects as a consequence of the development after mitigation (as summarised at table 24-19 of chapter 24 of the Environmental Statement). The landscape compensation shall be provided in accordance with the approved scheme and the timescales within it.

3.6 Paragraph 116 of the Welsh Minister's Decision Letter states:

"I agree the draft unexecuted legal agreement between the applicant and LPA, designed to help offset the seascape and landscape impacts, cannot be taken into account in the determination of the Order. However, I am satisfied the necessary compensation measures agreed between the applicant and the LPA could be delivered through recommended condition [23] as set out in Appendix 1 of the IR."

3.7 The Applicant considers that a similarly worded requirement as set out below could be included in the AyM DCO to ensure that landscape enhancement measures are secured prior to commencement of development. It is currently proposed that the landscape enhancement contribution will be secured through a section 106 planning obligation agreement. At this time, and as was the case in the Morlais project, the Applicant does not yet have an interest in suitable land to bind under such an agreement. Accordingly, the Applicant suggests that, while it will continue to negotiate drafting of the section 106 agreement with interested parties with the intention of reaching an agreed document, the agreement would form the 'scheme' to be completed under requirement rather than a planning obligation entered into during Examination.

(1) Work No. 1 must not be commenced until a scheme for the provision of landscape compensation has been submitted to and approved by the relevant planning authority [following consultation with NRW, the Isle of Anglesey County Council, Eryri National Park Authority and Conwy County Borough Council].

(2) The landscape compensation scheme shall set out appropriate measures to compensate for the impact of the development on the protected landscapes of Eryri National Park, the Isle of Anglesey Area of Outstanding Natural Beauty and Great Orme Heritage Coast.

(3) The landscape compensation shall be provided in accordance with the approved scheme and the timescales set out within it.

4 LEGAL AND POLICY CONTEXT

4.1 A requirement in a DCO should be consistent with the tests on the use of planning obligations in the Community Infrastructure Levy Regulations 2010 including regulation 122(2):

"A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.”

4.2 Furthermore, Planning Practice Guidance (which only applies in England) on the use of planning conditions mentions that planning conditions should be kept a minimum and only used where they satisfy the following tests¹:

- (a) necessary;
- (b) relevant to planning;
- (c) relevant to the development to be permitted;
- (d) enforceable;
- (e) precise; and
- (f) reasonable in all other respects.

4.3 These same six tests are included in Welsh Government guidance including Welsh Government Circular 016/14 on the use of planning conditions for development management. The circular provides guidance on how a decision maker should consider whether a condition meets the six tests.

4.4 The ExA and the Secretary of State should consider these six tests and the tests included in Regulation 122 when determining whether certain requirements, including in relation to landscape enhancement, should be included in the final DCO.

4.5 Identified mitigation measures will normally meet the Regulation 122 conditions and the six tests as they are directly related to the assessed impacts. Compensation measures will need to be 'necessary' to make the development acceptable in planning terms. This can be achieved by ensuring the compensation is scoped to address the identified planning harm and distinct from any form of community benefit.

4.6 A planning obligation can secure a financial contribution and set out the conditions under which any contribution may be made such as the purpose for which it may be used and the timing of the payments. The intention of the landscape enhancement fund is to provide a fund for enhancement projects within boundaries defined by LANDMAP areas where landscape-related significant effects from AyM may occur across part of these areas. The Applicant considers that the planning obligation is necessary to make the development acceptable in planning terms as it is addressing identified significant effects.

4.7 However, the proposed section 106 is still being negotiated and is currently in a draft format. In addition, the Applicant is not yet in a position where it could bind an interest in land. Instead, it is proposed that a similar approach to the Morlais deemed planning permission is taken with a similarly worded requirement included in the AyM DCO². This will ensure that the necessary compensation measures for seascape, landscape and visual effects could be delivered.

5 CONCLUSION

5.1 The Applicant will continue to negotiate the proposed section 106 agreement with the relevant parties in order to deliver landscape enhancement measures as compensation for significant seascape, landscape and visual effects. However, in the absence of an agreed draft or suitable land to secure the agreement, the Applicant considers that a requirement should be included in the DCO which would require a landscape

¹ Paragraph 003 of [Planning Practice Guidance: Use of planning conditions](#)

² Paragraphs 998 and 999 of the Inspector's Report (24 June 2021)

compensation scheme to be submitted for approval by DCC as the relevant planning authority prior to commencement of development.

- 5.2 This approach is consistent with the one taken in the Morlais tidal stream energy project and the Applicant considers that the inclusion of such a requirement would satisfy the relevant conditions and tests set out in legislation and policy.



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