



Awel y Môr Offshore Wind Farm

Applicant's Comments on the NSIP Action Plan and Opportunities for Offshore Environmental Net Gain

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Contents

1	Introduction.....	4
2	Applicant's comments on the NSIP Action Plan	5
2.1	Action Plan Summary	5
2.1.1	Reform Area 1 – Setting a clear strategic direction for infrastructure planning	7
2.1.2	Reform Area 2 - Operational reform to support a faster consenting process.....	7
2.1.3	Reform Area 4 - Recognising the role of local communities and strengthening engagement	8
2.1.4	Reform Area 5 - System capability – building a more diverse and resilient resourcing model	9
2.2	National Policy Statement(s) summary.....	10
2.3	Reform Area 3	12
2.3.1	Summary of reform area and associated actions	12
2.3.2	Applicant commentary	13
	Action 7	13
	Action 8	13
	Action 9	15
	Action 10	16
3	Opportunities for Offshore Ecological Enhancements.....	18
3.1	Background.....	18
3.2	The Welsh National Marine Plan	18
3.3	Opportunities for AyM.....	20
3.4	Securing and Delivering Opportunities.....	22
4	Conclusion	24
5	References	25
6	Appendix A: NRW Guidance Note 059 on the principles supporting restoration and enhancement in marine or coastal development proposals	26

1 Introduction

- 1 Following Issue Specific Hearing Four (ISH4), the Examining Authority (ExA) issued a number of Action Points for the Applicant and Interested Parties to respond to. Awel y Môr Offshore Wind Farm Limited (the Applicant) has prepared this document to provide responses to two of those Action Points:
 - ▲ This document provides a commentary (in Section 2) on the recently published "Nationally Significant Infrastructure: Action Plan for reforms to the planning process" (23 February 2023) (hereafter referred to as 'the Action Plan'), addressing the ISH4 Action Point to "*Provide a commentary on the recently published "Nationally Significant Infrastructure: Action Plan for reforms to the planning process" (23 February 2023).*" Whilst the Applicant has provided commentary on the Action Plan components, primary focus has been placed on Section 4 of the Action Plan which relates specifically to matters relating to Environmental Gain.
 - ▲ This document also provides commentary (in Section 3) on the opportunities for environmental net gain in the marine environment, in response to the ISH4 Action Point to "*Provide a note on potential opportunities in the project that will deliver offshore environmental net gain.*"
- 2 This document should therefore also be read in conjunction with other submissions which address the Applicant's approach to Environmental Gain, including the Planning Statement (Document 8.68 of the Applicant's Deadline 8 submission) which sets out the conformity of the AyM proposal with the extant National Policy Statements (NPS), in addition to the NPS Tracker and draft NPS Tracker (Documents 8.20 and 8.19 of the Applicant's Deadline 8 submission, respectively), which provide commentary on the accordancy of AyM with the extant and draft NPSs which are subject to ongoing consultation and revision.
- 3 This document should also be read in conjunction with the note on Opportunities for Ecological Enhancement and Connectivity at the OnSS Site at Document 8.24 of the Applicant's Deadline 8 submission.

2 Applicant's comments on the NSIP Action Plan

2.1 Action Plan Summary

- 4 In November 2020, the National Infrastructure Strategy (HM Treasury, 2020) established a National Infrastructure Planning Reform Programme, as part of Project Speed, to '*make the NSIP system more effective and deliver more certainty in the process and better, greener and faster outcomes*'.
 - 5 The proposed reforms to the NSIP regime (Department for Levelling Up, Housing & Communities, 2023) are presented in the Action Plan, which notes the objectives of the reform to be:
 - ▲ Ensuring the NSIP consenting process is better at meeting statutory timescales;
 - ▲ Faster where environmental and community concerns can be addressed before examination, greener for the environment;
 - ▲ Fairer for communities; and
 - ▲ More resilient in resourcing.
 - 6 In reflection of this the Action Plan identifies five Reform Areas:
 - ▲ 1. Setting a clear strategic direction, where National Policy Statements and wider government policy reduce the policy ambiguity faced by individual projects.
 - ▲ 2. Bringing forward operational reforms to support faster consenting with an emphasis on delivering proportionate examinations for all projects, strengthening pre-application advice and introducing a fast-track consenting timeframe for projects that meet quality criteria.
 - ▲ 3. Realising better outcomes for the environment replacing the cumbersome environmental assessment processes with new Environmental Outcomes Reports; reviewing the protected sites and species policy framework (including Habitats Regulations Assessment (HRA)) and introducing biodiversity net gain and developing principles for marine net gain for NSIPs.
 - ▲ 4. Recognising the role of local authorities and strengthening community engagement with NSIPs, with greater support and measures to embed community input and benefits much earlier in the process.

- ▲ 5. Improving system-wide capacity and capability, including through developing skills and training and extending proportionate cost recovery by the Planning Inspectorate and key statutory consultees to support effective preparation and examination of NSIPs and build resilience into the system.
- 7 It is relevant to note that the initial implementation timescales for the Action Plan are from spring 2023 through to November 2025 and beyond. The Action Plan identifies a number of key areas of the proposed reforms for which consultation will be undertaken prior to implementation.
- ▲ Measures to streamline and improve the examination process;
 - ▲ A new fast track consenting timeframe and the quality standards that NSIPs will be required to meet to be eligible for fast track; and
 - ▲ Proposals to move towards full cost recovery across the NSIP system during spring 2023.
- 8 Following consultation on the key areas of the proposed reforms, and from September 2023 onwards, and therefore outside the anticipated determination period for AyM, the Action Plan proposes to pilot key aspects of the reforms on a number of projects from different sectors, including the new fast track consenting timeframe. It is noted that the UK Government will begin work to identify suitable projects through the 'early adopter and pilots' programme from spring 2023.
- 9 Section 2.3 of this document considers Reform Area 3 (*Realising better outcomes for the natural environment*) in more detail, however the Applicant has provided outline commentary on the other four key reform areas identified within the Action Plan in the following sections.

2.1.1 Reform Area 1 – Setting a clear strategic direction for infrastructure planning

- 10 The Actions in this Reform Area aim to ensure government sets out and maintains a robust and up-to-date policy framework across the suite of NPSs. Secretaries of State (SoS) will review the existing NPSs, where appropriate, to provide a clear and up-to-date need case for infrastructure. This includes updates to the relevant NPSs for AyM (EN-1, EN-3 and EN-5). The timescale for the NPSs to be updated remains unclear, however it is clear from Section 1.6 of the revised EN-1 (described in further detail below in Section 2.2) that AyM, by virtue of the application having been made prior to the designation of any revised NPSs, is to be determined in accordance with the extant NPSs. The draft NPSs are noted as potentially having some weight, but given the draft status and the absence of further consultation, the Applicant's view is that the weight the SoS should give to the revised draft NPS is, in most cases, extremely limited. This is particularly true with regard to the extent to which Environmental Net Gain may be applied in the offshore environment, due to the early stage in the understanding of Marine Net Gain, and the differing approach to Biodiversity Net Gain implemented onshore in a Welsh context.
- 11 Notwithstanding this, the Applicant has submitted an NPS tracker and draft NPS tracker (Documents 8.19 and 8.20 of the Applicant's Deadline 8 submission) which identify AyM's demonstrable accordance with both the extant and draft NPSs across a number of key relevant areas.

2.1.2 Reform Area 2 - Operational reform to support a faster consenting process

- 12 The Actions in this Reform Area seek to ensure that project issues are identified collaboratively and addressed early on when changes are easier to make. This is anticipated to be achieved through incentivisation and through creating the conditions for early, meaningful engagement between infrastructure developers and those with an interest in their projects, including communities, those with land and property interests, local authorities, statutory bodies, and others.

- 13 Ostensibly this is to be achieved through the establishment of an enhanced pre-application service for the NSIP process, to support early meaningful engagement and potential resolution of differences between key parties.
- 14 Whilst this service is evidently not currently available and was not available during the pre-application phase of the AyM project, the Applicant embraced an enhanced and extended Evidence Plan approach to ensure meaningful engagement on EIA and HRA matters (APP-301, APP-302 and APP-303). This facilitated, for example, the early modification of the proposed offshore components of the project to avoid features of conservation importance such as the Constable Bank, and to minimise impacts on sensitive visual receptors as far as practicable. Several further examples exist of early phase engagement, through liaison and discussion with landowners, statutory and non-statutory engagement, and phases of public engagement, the net result of which has been the ability to conduct an examination which focusses on key residual matters.
- 15 Therefore, the Applicant supports this Action in-principle and in the absence of the system being in place, the Applicant has adopted an industry-leading approach to evidence collation and agreement through the use of the EIA Evidence Plan.

2.1.3 Reform Area 4 - Recognising the role of local communities and strengthening engagement

- 16 The Actions in this Reform Area focus on the need for early engagement between infrastructure developers and communities (working with local authorities and statutory environment bodies) to understand potential impacts, and to secure appropriate mitigation where impacts cannot be avoided or minimised.
- 17 Engagement is also noted as key to securing wider community benefits from projects related to their impacts, such as training and skills development so that local people can benefit from the jobs created.

- 18 The proposed reforms focus on incentivising early, constructive engagement on NSIPs, to address impacts early and reduce the burden on infrastructure developers and communities at the later stages of the consenting process, notably the examination.
- 19 Whilst the various forms of incentivisation identified within the Action Plan are evidently not currently available and were not available during the pre-application phase of the AyM project, the Applicant has robustly sought community input to the application through engagement events both within and outside the statutory process (as comprehensively described in the Consultation Report (APP-024)), and has sought to ensure benefits for the community are at the forefront of the overall implementation of the proposed project. Whilst factors such as the Community Benefit Package are not currently refined, the Applicant has a long and demonstrably positive presence within the region, increasing employment opportunities both directly and for example through the facilitation of training partnerships such as those at the Colleg Llandrillo.
- 20 Further to this, the Applicant has recently committed to measures which will support and enhance the use of the Welsh language, including but not limited to ensuring that Welsh language qualifications are held by contractors operating on the project.
- 21 Therefore, the Applicant supports this Action in-principle and in the absence of the system being in place, the Applicant has adopted a robust and comprehensive approach to community engagement.

2.1.4 Reform Area 5 - System capability – building a more diverse and resilient resourcing model

- 22 The Actions in this Reform Area seek to bolster capacity and capability in the system, supported by a move towards full cost recovery to ensure it is sustainable and scalable into the future.
- 23 The Applicant welcomes the bolstering of capacity within the planning system at both local and national scales. The Applicant has entered into planning agreements with relevant local authorities during the evolution of AyM, through supporting local planning authorities in gaining technical support on areas such as SLVIA.

24 The Applicant therefore has demonstrably sought to support the local planning system capability and resilience and welcome proportionate cost recovery where this is deemed appropriate.

2.2 National Policy Statement(s) summary

25 The key policy test for the AyM project is to assess on balance, whether the application is in accordance with the relevant NPSs and whether any specified exceptions apply. This may include considering whether the policies set out in the NPSs for delivery of renewable energy are outweighed by any adverse impacts that have been identified noting the presumption is in favour of consent being granted for applications which accord with any relevant NPSs. This is not to the exclusion of the Marine Policy Statement and other national policies, in particular in the context of the Welsh National Marine Plan (WNMP) (considered in Section 3.2), however these are not considered relevant in the context of this commentary of the Action Plan.

26 The Applicant's Planning Statement (Application reference 8.1; Document 8.68 of the Applicant's Deadline 8 submission) sets out the accordance of all elements of the project with the relevant NPS policies and other policy and legislative requirements. At the time of drafting the Planning Statement, the Energy NPSs had recently been subject to consultation and revision, following submission of draft NPSs for consultation in November 2021.

27 The draft NPS (draft EN-1, paragraph 1.6.2) specifically notes that *for any application accepted for examination before designation of the reviewed statements, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS.* It further notes that *[T]he 2021 amendments will therefore have effect only in relation to those applications for development consent accepted for examination after the designation of those amendments.* Paragraph 1.6.3 then goes on to note that *any emerging draft NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act and with regard to the specific circumstances of each development consent order application.*

28 As noted within the Applicant's Planning Statement, although not finalised, consideration of the draft NPS was given with regards to biodiversity, and Biodiversity Net Gain (BNG) in particular. The draft NPS EN-1 encourages an applicant to consider how proposals can contribute to BNG in Paragraphs 5.4.4, noting that the scope of potential gains is dependent on the type, scale and location of each project. Paragraph 5.4.17 of the draft NPS adds that:

“Proposals should also consider any opportunities to maximise the restoration, creation, and enhancement of wider biodiversity. Consideration should be given to improvements to, and impacts on, habitats and species in, around and beyond developments, for wider ecosystem services and natural capital benefits, beyond those under protection and identified as being of principal importance. This may include considerations and opportunities identified through Local Nature Recovery Strategies, and national goals and targets set through the government's strategy for nature for example.”

29 In addition, Paragraph 5.4.19 states that:

“Applicants should consider producing and implementing a Biodiversity Management Strategy as part of their development proposals. This could include provision for biodiversity awareness training to employees and contractors so as to avoid unnecessary adverse impacts on biodiversity during the construction and operation stages.”

30 Proposals to provide onshore biodiversity enhancement were discussed with NRW and Denbighshire County Council through the Onshore Ecology Expert Topic Group (ETG) meetings held in November 2021. The proposals, which were agreed in principle with ETG members, were presented within the Outline Landscape and Ecology Mitigation plan (oLEMP) which has subsequently been updated, the current draft having been submitted at Deadline 7 (REP7-026), and agreed with NRW in the SoCG (Document 8.35 of the Applicant's Deadline 8 submission).

31 The oLEMP sets out the in-principle measures which will be implemented to avoid, reduce, mitigate or compensate for potential impacts on landscape and biodiversity resources and measures intended to provide biodiversity enhancements due to the onshore elements of AyM. The oLEMP and final approved LEMP will operate as the Biodiversity Management Strategy anticipated by Draft NPS EN-1.

- 32 In the context of the extant NPS the environmental information and assessment carried out for AyM concludes that there are no significant effects with regards the EIA Regulations and therefore effects on onshore biodiversity should not weigh against the substantial benefits of AyM when considering the planning balance. Further to this it is evident that the extant NPS is the correct NPS against which the AyM should be measured.
- 33 Specifically with regard to Marine Net Gain, the Applicant has been involved in and is following closely the recent Marine Net Gain Principles consultation administered by DEFRA. It is also aware that the action plan includes the incorporation of biodiversity net gain for all onshore projects by November 2025 (emphasis added) and briefly sets out that a further government response to the Marine Net Gain Principles consultation will follow in due course. As such, there is limited detail on the proposed requirements in terms of the marine environment compared to the terrestrial environment. Notwithstanding this, the following section provides further commentary on the specific Reform Area with regards offshore environmental benefits and enhancement.

2.3 Reform Area 3

2.3.1 Summary of reform area and associated actions

- 34 Reform Area 3 notes that the current system is too often delivering process rather than helping deliver better environmental outcomes. The proposed reforms aim to ensure the NSIP system is better placed to meet the Government's strategic environmental goals and actively address the environmental impacts of development.
- 35 Key focus areas include the intended simplification of the environmental assessment process, the introduction of Environmental Outcome Reports (EORs) to introduce an outcomes-based approach to environmental assessment and project delivery, reformation of the system of site and species protection, incorporation of environmental net gain, and implementation of an Offshore Wind Environmental Improvement Package (OWEIP).
- 36 To this end there are a number of specific Actions as follows:

- ▲ Action 7 - Establish a new Environmental Outcomes Reports process that will replace SEA/EIA. This is to be lead by the Department for Levelling Up, Housing and Communities, and to be implemented following Royal Assent of the Levelling Up and Regeneration Bill and further consultation.
- ▲ Action 8 - Review protected sites and species policy framework (including HRA) for terrestrial and marine environments. This is to be lead by Defra and will implement the outcomes of the Nature Recovery Green Paper.
- ▲ Action 9 - Incorporate Biodiversity Net Gain (BNG) requirements for all (terrestrial) NSIP projects from November 2025 and develop an approach for Marine Net Gain. This is to be lead by Defra, with a biodiversity statement expected to be consulted on in 2023 followed by formal commencement of BNG for NSIPs anticipated in November 2025.
- ▲ Action 10 - Implement a new Offshore Wind (OFW) Environmental Improvement Package. To be lead by Defra, through the Energy Bill, at a timescale that is not currently published.

2.3.2 Applicant commentary

Action 7

- 37 With regards the proposed establishment of EORs to replace SEA and EIA whilst this is not anticipated to affect AyM, the Applicant can confirm that the principle of a simplified approach to assessment is welcome. The Applicant has endorsed a proportionate approach to EIA but would note that where uncertainties exist and cannot be agreed beyond scientific doubt, the ability to refine the scope of an EIA to present a proportionate is challenging to agree with relevant stakeholders and authorities.

Action 8

- 38 The review presented in the Nature Recovery Green Paper indicates a simplified and more strategic approach to site designation and management, to include consolidation of existing site designations into a simpler set of designations with clarity over the importance of these sites, nationally and internationally, with a view to facilitating a single coherent assessment to be applied for site protection.

- 39 Again, this is not anticipated to directly affect the determination of AyM, however the Applicant would note broad support for the principle. The Applicant has submitted a comprehensive assessment of potential effects to designated sites at an International, National, and local level which is presented across a number of documents.
- 40 The Report to Inform Appropriate Assessment (Application reference 5.2; Document 8.40 of the Applicant's Deadline 8 submission) records the assessment undertaken on International designated sites and concludes that no adverse effects on site integrity are anticipated; this conclusion has been agreed with the Statutory Nature Conservation Body and is reflected in the Examining Authority's Report on the Implications for European Sites (OD-021). The assessment of potential impacts to sites designated at a local level is presented in the onshore biodiversity chapter of the ES (Application reference 6.3.5; Document 8.46 of the Applicant's Deadline 8 submission), as there are no national or local designated sites in the marine environment. The conclusions drawn in the onshore biodiversity chapter are similarly that there will be no significant adverse effects on national and local designated sites; again these conclusions are agreed with the SNCB and Local Planning Authority (JNCC SoCG, REP4-029; NRW (Onshore) SoCG, Document 8.35 of the Applicant's Deadline 8 submission; DCC SoCG, REP7-049).
- 41 The positive conclusions are in no small part due to the consultation approach adopted by the Applicant, working in partnership with relevant authorities under the auspices of the Evidence Plan (APP-301, APP-302 and APP-303) to refine the project design and introduce appropriate mitigation measures. The proposed reformed approach would not alter the positive conclusions drawn in the assessment(s) but may in the future allow for a streamlined review by consultees and reduce the burden of processes such as the Evidence Plan, which the Applicant welcomes.

Action 9

- 42 The anticipated requirement for the incorporation of Biodiversity Net Gain requirements for all (terrestrial) NSIPs from November 2025 and develop an approach for Marine Net Gain is recognised by the Applicant. The Applicant has noted that with regards Biodiversity Net Gain, a different terminology and approach is endorsed in Wales, but not withstanding this the Applicant has sought to include enhancements and biodiversity gain in multiple aspects of the proposed design. As noted in Section 2.2 of this document these are primarily recorded in the oLEMP (REP7-026) and associated documents including further submissions Deadline 8 on Opportunities for enhancement and connectivity (OnSS) (Document 8.24 of the Applicant's Deadline 8 submission). It is also pertinent to note that until the Action Plan comes into force, the position for NSIPs in Wales remains unchanged with no current requirement to quantify losses and gains through use of a metric. This position has been confirmed by both NRW and Welsh Government (Document 8.35 of the Applicant's Deadline 8 submission, and REP1-097).
- 43 One of the five aims for the new regime is for it to become greener by delivering positive outcomes for the environment and following the mitigation hierarchy with proactive plans for environmental protection and enhancement.
- 44 It is therefore the Applicant's position, with regard to terrestrial NSIPs, that whilst the biodiversity gain aspirations captured within the Action Plan are not currently relevant for AyM, weight may be placed on the Applicant's approach to biodiversity enhancement and gain, and the robust conclusions of no significant adverse effects.
- 45 It is recognised that a complementary marine net gain system is under development and Defra has consulted on the principles of marine net gain in English waters. Defra is anticipated to publish a formal response to the consultation in due course and is expected to develop the detail of the policy in light of consultation responses.

- 46 The next planned phase of work is expected to focus on implementation and delivery of marine net gain. In terms of the timescale for the implementation of this change, it is noted that the Action Plan cites that the guidance underpinning the reforms is unlikely to be in place until spring 2024, with the reforms not fully implemented until 2025.
- 47 It is therefore highly unlikely that there will be any formalisation of the requirement for, or guidance on, the delivery of marine net gain within the determination timeframe of AyM. However, as previously stated, the Applicant is committed to engaging positively with this concept as it becomes stipulated in policy, and guidance is made available.
- 48 It is therefore similarly the Applicant's position that the aspirations of the Action Plan are demonstrably at too early a stage, not having yet been consulted on, to be applicable to AyM.
- 49 Notwithstanding this position, the Applicant recognises the aspirations presented within the Action Plan, and the clear timescale presented which states formal commencement of terrestrial BNG to be November 2025. It also recognises the aspiration for the development of marine net gain and will engage positively with the process through the relevant plans approved by NRW under any marine licences (see the offshore Statement of Common Ground (SoCG) with NRW at Document 8.34 of the Applicant's Deadline 8 submission).
- 50 The Applicant has provided further commentary on the opportunities for ecological enhancements in the marine environment in Section 3 of this document.

Action 10

- 51 The implementation of a new Offshore Wind (OFW) Environmental Improvement Package. The Action recognises that offshore wind infrastructure may have a significant impact on the marine environment and consideration of appropriate environmental mitigation and compensation can lead to delays in the consenting process. The Applicant would note that this has not been the case with regards AyM as a result of the Evidence Plan process and the engagement of all parties involved in that process.

- 52 Notwithstanding this the Applicant notes that Defra is developing a library of strategic compensation measures which may be implemented for projects where impacts on Marine Protected Areas cannot be avoided, reduced or mitigated and imperative reasons of overriding public interest considerations apply. The Applicant recognises and welcomes that Defra is seeking powers through the Energy Bill to make changes to the Habitats Regulations Assessment (HRA) process specifically for offshore wind developments.
- 53 Although not applicable to AyM, as evidenced through the agreed conclusions that the project will not have an adverse effect on any designated sites, the Applicant considers the powers to establish a Marine Recovery Fund and implement strategic compensation to be appropriate in principle, subject to ongoing refinement and consultation.

3 Opportunities for Offshore Ecological Enhancements

3.1 Background

54 The Applicant noted the questions asked by the ExA during ISH4 whether the Applicant had considered concepts such as planting “sea-seed” and or collecting “sea litter”. The Applicant is fully aware of the latest industry commitments in relation to these concepts, and that such commitments and requirements to date have been driven solely to provide compensation (in Habitats Regulations terms) for some of the recent southern North Sea offshore wind farm proposals, and not for the delivery of marine net gain. For example:

- ▲ Hornsea Project Three proposed the establishment of seagrass beds as a compensatory measure for offsetting perceived effects on designated sandbank habitat (ultimately this measure was not required by the Secretary of State);
- ▲ Hornsea Project Four has also proposed the establishment of seagrass beds as a resilience measure to support its compensation proposals relating to offsetting impacts on certain ornithological receptors; and
- ▲ The Secretary of State considered (marine) debris clearance should form the compensatory measure to offset perceived effects on designated sandbank habitat for both Hornsea Project Three, Norfolk Vanguard and, Norfolk Boreas.

55 None of these measures proposed or imposed relate to the provision of net benefits for biodiversity. The Applicant does not consider that a commitment to such proposals is necessary for AyM, given it has no significant residual effects on the marine environment which have been effectively avoided, minimised or mitigated.

3.2 The Welsh National Marine Plan

56 It is recognised that protecting, restoring and enhancing the marine environment are among the key themes of the Welsh National Marine Plan (WNMP), with regard to the resilience of marine ecosystems.

- 57 The Welsh Government confirmed in its response to ExQ1.2.6 (REP1-097), that there is no established policy for the delivery or assessment of net gain in the marine environment. Welsh Government also set out in its response to ExQ1.2.6 that it published implementation guidance for the Welsh National Marine Plan which provides some examples of restoration and enhancement that could be considered in the marine environment.
- 58 In the absence of clear policy or guidance at this stage, it is not possible for the Applicant to identify appropriate offshore environmental benefit, how this would be secured or delivered, or the weight it should be afforded. NRW also stated in its response to ExQ2.12.5 that it was not aware of any emerging solutions to ecological engineering for cable and scour protection with biodiversity in mind and that would be appropriate for the cable and scour protection required for AyM.
- 59 The Applicant has been engaging with NRW and Welsh Government since 2019 on AyM, and at no stage has there been a request for the project to consider measures relating to net benefits for biodiversity in the marine environment and therefore, it has not formed part of the application that is before the ExA.
- 60 The WNMP contains a suite of Plan Objectives which are supported by specific General and Sector policies. The Policy of relevance with regard to the theme of environmental enhancement is ENV_01:

ENV General Policy – Living within Environmental Limits ENV_01: Resilient marine ecosystems Proposals should demonstrate how potential impacts on marine ecosystems have been taken into consideration and should, in order of preference:

a) avoid adverse impacts; and/or

b) minimise impacts where they cannot be avoided; and/or

c) mitigate impacts where they cannot be minimised.

If significant adverse impacts cannot be avoided, minimised or mitigated, proposals must present a clear and convincing case for proceeding. Proposals that contribute to the protection, restoration and/or enhancement of marine ecosystems are encouraged.

- 61 With regard to the marine environment, AyM has demonstrated (in agreement with NRW (see the SoCG at Document 8.34 of the Applicant's Deadline 8 submission) that it has avoided, minimised and (where necessary) mitigated impacts such that there are no significant residual effects.
- 62 It is clear that whilst the policy states that proposals that contribute to the restoration and/or enhancement of marine ecosystems are encouraged, they are not a policy requirement, and are placed at the lower end in the mitigation hierarchy which prioritises avoidance, minimisation and mitigation of impacts (in that order).
- 63 As noted above, the Applicant has engaged with NRW on AyM from an early stage, and has not been guided or directed by NRW to consider net benefits for biodiversity in the marine environment in its statutory advisory role in either the DCO or Marine Licence applications. NRW has also made its position clear in responses to ExA questions on the matter.

3.3 Opportunities for AyM

- 64 The Applicant set out in ISH4 (see written summary of oral representation; Document 8.7 of the Applicant's Deadline 8 submission) that emerging engineering solutions with biodiversity in mind have been focused on enhancements to proposed infrastructure elements such as cable and scour protection material. This is because such infrastructure is typically required for development and can be delivered within the TCE leased area as part of the DCO or MLs.
- 65 For example, the Offshore Project Description chapter of the ES (APP-047) states that cable protection may be employed in instances where cable burial, or burial to a sufficient depth, is not achievable, and scour protection around foundation bases to mitigate scouring of the seabed around infrastructure. The Design Envelope does not preclude the deployment of nature inclusive designs, provided they are within the consented envelope in terms of their physical dimensions. The final design would be agreed with NRW via conditions of the marine licence that require plans for cable and scour protection to be agreed prior to construction. Further information on this is available in the Marine Licence Principles (Document 8.11 of the Applicant's Deadline 8 submission).

- 66 The Applicant set out specific examples of emerging ecological solutions to such infrastructure in its response to ExQ2.12.5, which included tailored products such as concrete mattresses.
- 67 NRW has published a guidance note 'GN059' on the principles supporting restoration and enhancement in marine or coastal development proposals, as part of its remit to provide statutory and non-statutory advice on how developments may affect the marine environment. Whilst this guidance note has not been referred to by NRW or provided in previous advice, the Applicant has engaged with NRW since ISH4 on this subject and was provided with a copy on 10 March 2023. This note is provided as Appendix A of this document.
- 68 GN059 highlights that “[...] *inclusion of restoration and enhancement as part of marine developments is a relatively new consideration for developers, decision-makers, and for NRW advice*”, however sets out five core principles as a starting point for meaningful discussions with project developers. The Applicant is committed to engaging positively with the concept as it becomes more clearly defined, should this occur within the delivery timeframe of AyM. In this unlikely event, future discussions are likely to be framed around these core principles:
- ▲ **Principle 1:** Restoration and enhancement should seek to increase marine ecosystem resilience;
 - ▲ **Principle 2:** Restoration and enhancement should be deliverable and sustainable in the long term;
 - ▲ **Principle 3:** Embedding restoration and enhancement into a proposal should not prejudice operational activities;
 - ▲ **Principle 4:** Restoration and enhancement can be delivered at any scale and any location; and
 - ▲ **Principle 5:** Delivery of restoration and enhancement provides opportunities for learning.
- 69 Whilst there is currently no policy requirement to deliver net benefits for biodiversity in the marine environment (as stated in written and oral submissions previously made) the Applicant is receptive to exploring options around environmentally focused design, and this will be discussed with NRW as the Marine Licensing process progresses into the post-consent phase through detailed design.

3.4 Securing and Delivering Opportunities

- 70 The Marine Licence Principles document (Document 8.11 of the Applicant's Deadline 8 submission) sets out the anticipated conditions of the Marine Licence(s), should they be granted, which will formalise the Applicant's commitments within the consent. Accordingly, the Applicant (in agreement with NRW) has proposed a number of modifications to the Marine Licence Principles (Document 8.11 of the Applicant's Deadline 8 submission) (which are also reflected in the Schedule of Mitigation and Monitoring (Document 8.12 of the Applicant's Deadline 8 submission)) to demonstrate how AyM can align with the concept of contributing to the protection, restoration and/or enhancement of marine ecosystems, as set out in ENV_01 of the WNMP.
- ▲ Physical and ecological monitoring to ensure minimal disturbance to seabed habitats and species through micro-siting (where possible); and
 - ▲ Specific consideration to be given to environmentally sensitive protection material that can be demonstrated to afford environmental benefits, whilst meeting technical need.
- 71 The Marine Licence Principles (Document 8.11 of the Applicant's Deadline 8 submission) outlines that the Applicant would anticipate there being conditions in any Marine Licence granted for the scheme for environmental monitoring, as well as a Cable Specification and Installation Plan, and a Scour Protection Management Plan to be agreed with NRW prior to construction. These plans would detail the final design of any cable or scour protection required (within the design envelope consented). If opportunities for enhancement presented themselves in the post-consent phase and were required to be considered by NRW at the time, these plans would offer suitable mechanisms of agreeing their exact specification.
- 72 The commitment to consider environmentally sensitive protection material has been added to the wording of ML conditions 20 and 21.
- 73 Furthermore, the commitment to ensure disturbance to seabed habitats and species through micrositing has been added to the wording of ML conditions 34 and 38.

74 An update has also been made in the offshore SoCG with NRW (Document 8.34 of the Applicant's Deadline 8 submission), confirming agreement on AyM's proposed approach to marine net benefits for biodiversity.

4 Conclusion

- 75 In conclusion, the Applicant considers the Action Plan to be at too early a stage to be a material consideration in the determination of the AyM project. Similarly, the general requirements for BNG are considered to be either not applicable in a Welsh context onshore, or not currently applicable in a marine context because of the early stage of guidance and policy.
- 76 Notwithstanding this, the Applicant is receptive to the principle of Marine Net Gain (or net benefits for biodiversity) and has agreed an approach whereby potential measures may be introduced in consultation with NRW as part of any Marine Licence granted.

5 References

Department for Levelling Up, Housing & Communities (February 2023).

Nationally Significant Infrastructure: action plan for reforms to the planning process.

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[Accessed: March 2023].

HM Treasury (November 2020). National Infrastructure Strategy.

<https://www.gov.uk/government/publications/national-infrastructure-strategy> [Accessed: March 2023].

6 Appendix A: NRW Guidance Note 059 on the principles supporting restoration and enhancement in marine or coastal development proposals

Principles supporting restoration and enhancement in marine or coastal development proposal

Reference number:

Guidance note 059

Document Owner:

Marine and Coastal Policy and Planning

What is this document about?

This document sets out our approach to advising on inclusion of restoration or enhancement elements in a marine or coastal development proposal.

Who is this document for?

The intended audience is internal staff, developers and decision makers involved in marine and coastal planning and development.

Contact for queries and feedback

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Version History

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Review Date: [03-2024]

To report issues or problems with this guidance [contact Guidance Development](#)

Introduction

One of NRW's roles is to provide advice (statutory and non-statutory) on how new legislation, policies, plans and developments might affect the Welsh marine environment

We aim to provide marine advice that will **positively influence** policy, planning, development, and decision making; to ensure that the marine environment and natural resources of Wales are sustainably maintained, enhanced and used, now and for the future.

Restoration and enhancement of marine and coastal environments is receiving growing attention from a wide range of stakeholders, from biodiversity-focussed activities through to elements of wider development planning NRW are working to develop evidence, advice and guidance to support marine and coastal restoration and enhancement, recognising the opportunities for the delivery of multiple environmental and societal benefits

This document sets out our approach to advising on inclusion of restoration or enhancement elements in a marine or coastal development proposal, in line with our first general marine advice principle: our marine advice will be proactive and targeted on enabling consideration of key environmental issues and opportunities at an early stage.

This document and the principles herein sit outwith NRW advice related to impact assessment, mitigation and compensation that may be required under the Habitats Regulations.

Legislation and policy

The first **Welsh National Marine Plan (WNMP)**, adopted in Nov 2019, supports integrated decisions that take full account of environmental, social and economic issues and therefore plays a key role in the delivery of the objectives of the Environment Act and Well-being of Future Generations Act in Welsh seas.

Under the heading "Living with Environmental Limits", the Plan sets out a suite of policies that "promote the protection and enhancement of the marine environment to ensure that Wales has resilient marine ecosystems that can meet the needs of future generations".

This includes WNMP Policy **ENV_01: Resilient marine ecosystems** which reads:

Proposals should demonstrate how potential impacts on marine ecosystems have been taken into consideration and should, in order of preference:

- a) avoid adverse impacts; and/or
- b) minimise impacts where they cannot be avoided; and/or
- c) mitigate impacts where they cannot be minimised.

If significant adverse impacts cannot be avoided, minimised or mitigated, proposals must present a clear and convincing case for proceeding.

Proposals that contribute to the protection, restoration and/or enhancement of marine ecosystems are encouraged.

The WNMP clarifies the aim of Policy ENV_01 to “ensure that biological and geological components of ecosystems are maintained, restored where needed and enhanced where possible, to increase the resilience of marine ecosystems and the benefits they provide” and as such provides an opportunity for consideration of the inclusion of restoration and enhancement in a development project.

The Welsh Government’s WNMP [Implementation Guidance](#) provides some examples of restoration and enhancement that could be considered under this policy and instructs marine plan users to engage with NRW for advice:

“Proposals are encouraged to contribute to the restoration or enhancement of marine ecosystems. Incorporating restoration and/or enhancement of marine ecosystems into proposals does not have to be expensive or complex. It could include using different substrates for building on the foreshore that are favourable to post construction colonisation by a range of species. Small changes to intertidal structures that allow the formation of crevices in walls or pools at low tide as opposed to the structure drying out entirely can provide an additional environment for rock pool species that would otherwise be unable to exist there. Developers should engage with NRW for advice on enhancement to ensure any proposed enhancement is suitable.”

NRW Advice

NRW provides advice to developers and decision makers on a statutory basis regarding the protection (maintenance) of marine biodiversity, particularly in relation to protected habitats and species

However, inclusion of restoration and enhancement as part of marine developments is a relatively new consideration for developers, decision makers, and for NRW advice.

As part of our advisory role, we have developed a set of five core principles on restoration and enhancement of marine and coastal ecosystems to provide a starting point for meaningful discussions with project developers.

Core principles for inclusion of restoration or enhancement in a marine or coastal development proposal

Principle 1: Restoration and enhancement should seek to increase marine ecosystem resilience

Appropriate restoration or enhancement of marine habitats and species, in keeping with the natural environment, is encouraged to help to build resilience of marine ecosystems in Wales by increasing biodiversity and supporting ecosystem functions such as nutrient cycling, water filtration and coastal protection

Principle 2: Restoration and enhancement should be deliverable and sustainable in the long term

Proposals that incorporate established / evidenced approaches to restoration and enhancement, that can be maintained into the future, are encouraged to maximise their contribution to building marine ecosystem resilience.

There is also the opportunity to trial new and innovative approaches to restoration and enhancement under this policy, in a way that would not be possible under other regulatory requirements (such as compensation under the Habitat Regulations and / or WNMP policy ENV_02: Marine Protected Areas).

Consideration should be given to ensuring that restoration and enhancement is not likely to be compromised in the longer term e.g., by planned developments or predicted climate change impacts.

Principle 3: Embedding restoration and enhancement into a proposal should not prejudice operational activities

Developers need to be able to continue to deliver operational activities in the longer term, and delivery of restoration and enhancement should not prevent these.

Principle 4: Restoration and enhancement can be delivered at any scale and any location

Restoration and enhancement does not need to be costly, complex, large in scale or directly related to the activity or location for which a permission is being sought in order to contribute to improving the resilience of marine ecosystems in Wales

Principle 5: Delivery of restoration and enhancement provides opportunities for learning

Restoration and enhancement of marine ecosystems is still a relatively new concept. It is important that there is: sufficient scope and flexibility for developers to consider different approaches; effective dialogue between developers, regulators and advisors to develop ideas; and appropriate and proportionate monitoring in place to learn from the actions that are taken to inform future guidance and best practice. This is particularly important for marine and coastal ecosystems, where the evidence base can be patchy and the approaches for delivery are less well established.

Supporting work

The principles set out above, sit within and support NRW's broader work to develop evidence, advice and guidance to enable nature recovery and enhance resilience of Wales' marine and coastal ecosystems, recognising the opportunities for the delivery of multiple environmental and societal benefits

There are a number of products currently available that can support initial considerations of embedding restoration or enhancement within a proposal, including:

- Research to identify what and where the key opportunities are for delivering nature recovery, e.g.
 - [Restoring marine and coastal habitats in Wales: identifying spatial opportunities and benefits](#)
 - [Supporting the implementation of the Welsh National Marine Plan: Enhancing marine ecosystems](#)
- Developing understanding of the range of benefits derived from marine natural resources which are underpinned by biodiversity and ecosystem resilience, e.g.
 - [Estimating the Carbon Sink Potential of the Welsh Marine Environment](#)

In addition, we continue to provide advice on, and delivery of projects focused on restoring and enhancing marine and coastal ecosystems in Wales, and engaging with Welsh and UK partners in developing evidence and best practice.

Further information

Read our [guidance for marine developers](#).

Find out more about our [Development Planning and Marine Services](#) and [Marine Licensing](#).

Explore [our marine and coastal evidence reports](#).

View our [Marine Area Statement](#).

You can find out more about marine planning in Wales on Welsh Government's [website](#).



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