Appendix 9.1

Ecology and Nature Conservation – Regulatory / Planning Policy Framework
1 INTERNATIONAL AND NATIONAL LEGISLATION


1.1.1 Commonly known as the Habitats Directive, this Directive fulfils the requirements of the Bern (1982) and Bonn (1985) Conventions by means of assessing ecosystems for their habitat characteristics and species assemblages and promoting the maintenance of biodiversity in Europe. The Directive provides for the creation of a network of protected areas across the continent, and the annexes to the document list habitats and species of importance in a Europe-wide context.

1.1.2 National legislation in the form of The Conservation of Habitats and Species Regulations 2010 exists, enabling relevant organisations to exercise authority to ensure that the requirements of this Directive are met in the UK.


1.2.1 The European Community Council Directive on the Conservation of Wild Birds (79/409/EEC), more generally known as the Birds Directive, aims to protect all naturally occurring wild birds, their nests, eggs and habitats. It requires member states to designate Special Protection Areas (SPAs) for protection of certain species.

1.3 The Conservation of Habitats and Species Regulations 2010

1.3.1 The Conservation of Habitats and Species Regulations 2010 constitute the UK government’s implementation of the Habitats Directive in England and Wales. The Regulations provide for the designation of both SPAs (first established under the Birds Directive, 1979) and Special Areas for Conservation (SACs) as part of the Natura 2000 network of protected areas across the European Union.

1.3.2 For European Protected Species, the 2010 Conservation of Habitats and Species Regulations gives protection from deliberate capture, killing or disturbance (such that the disturbance affects the ability of the European Protected Species to survive, breed or reproduce, to rear or nurture their young, or to hibernate or migrate; or the disturbance affects significantly the local distribution or abundance of the European Protected Species). It is also an absolute offence to destroy or damage the resting site or breeding site of a European Protected Species.
1.4 The Wildlife and Countryside Act 1981 (as amended)

1.4.1 The Wildlife and Countryside Act 1981; and subsequent amendments, as amended and strengthened by the Countryside and Rights of Way Act 2000, is the principle mechanism for the legislative protection of wildlife in Great Britain. The Act established a statutory framework for the protection of wildlife. The Act provides for the designation of Sites of Special Scientific Interest, which are selected as the best national examples of habitat types, sites with notable species and sites of geological importance.

1.4.2 Schedules 1-4 of the Wildlife and Countryside Act 1981 (and amendments) deal with the protection of wild birds. Schedule 5 of the Act details protection of other animal species. Full protection is given under Section 9 of the Act to certain animals listed on Schedule 5, including great crested newts, water voles and all species of bats. Partial protection under Section 9 is given to certain other species, including all common species of reptile, including common lizard. Badgers are listed on Schedule 6 of the Act which outlaws certain methods of taking or killing animals, where necessary. Schedule 8 of the Wildlife and Countryside Act 1981 (and amendments) details protection for plants and fungi.

1.5 The Countryside and Rights of Way Act 2000

1.5.1 The Countryside Rights of Way Act 2000 gives greater protection to Sites of Special Scientific Interest and strengthens wildlife enforcement legislation by the introduction of the offence of ‘reckless disturbance’. The Act also required Government Departments to have regard to biodiversity and conservation; Section 74 of the Act required lists of habitats and species of principal importance to be produced, for which conservation steps should be taken or promoted. The requirement to prepare such lists of habitats and species has been extended by the Natural Environment and Rural Communities Act 2006.

1.6 The Natural Environment and Rural Communities Act 2006

1.6.1 The Natural Environment and Rural Communities (NERC) Act 2006 places a duty upon public bodies to consider enhancement of biodiversity within all of their actions. In addition, this Act provides for those species identified within the UK Biodiversity Action Plan (UK BAP) and the relevant Local Biodiversity Action Plans (LBAPs) to be considered as biodiversity conservation priorities (see below).

1.7 Protection of Badgers Act 1992

1.7.1 Badgers are extensively protected by the Protection of Badgers Act (1992) which consolidates the legislation specific to badgers. The Act makes it an offence to wilfully take, kill, injure or ill-treat a badger; to obstruct, destroy, or damage in any part, a badger’s sett; or to disturb badgers within a sett.
1.8 The Hedgerows Regulations 1997

1.8.1 The Hedgerows Regulations 1997 have been designed to protect ‘important’ hedgerows for which replanting is no substitute. The ‘importance’ of a hedgerow depends upon a number of archaeological, wildlife and landscape criteria.

1.9 National Parks and Access to the Countryside Act 1949

1.9.1 This Act gave powers to English Nature (then called the Nature Conservancy Council) to designate Sites of Special Scientific Interest and National Nature Reserves, and to local authorities to designate Local Nature Reserves.


1.10.1 The main aim of this Directive is to achieve ‘Good Environmental Status’ (GES) in the whole of the European marine environment by 2020. In order to achieve and maintain this status in a coherent and strategic fashion, the Marine Strategy Framework Directive 2008 (MSFD) has adopted the following approach;

- On the basis of geographical and environmental criteria, the MSFD has established four European Marine Regions (EMRs), each with sub-regions.
- Each of the Member States is required to work in co-ordination with other countries within the same EMR (and sub-region) to develop a marine strategy for their regional waters.
- Co-ordination of countries is achieved through the Regional Seas Conventions.

1.10.2 Marine strategies developed by each Member State must contain the following information;

- An initial assessment of the current environmental status of that Member State’s marine waters
- A determination of what Good Environmental Status means for those waters
- Targets and indicators designed to show whether a Member State is achieving GES
- A monitoring programme to measure progress towards GES
- A programme of measures designed to achieve or maintain GES (JNCC/Defra, 2010)
- Requires Member States to designate marine protected areas (MPAs) within their regions (and sub-regions) to ensure achievement of GES

1.10.3 As a part of the North East Atlantic Marine Region, the UK falls within the Greater North Sea (the North Sea, the English Channel, the Skagerrak and the
Kattegat to the limits of the OSPAR maritime area, bounded on the north by latitude 62° N, on the west by longitude 5° W and the east coast of Great Britain, and on the south by latitude 48° N) and the Celtic Seas (the area bounded by, on the east, longitude 5° W and the west coast of Great Britain and on the west by the 200 metre isobath (depth contour) to the west of 6° W along the west coasts of Scotland and Ireland) sub-regions and is co-ordinated by the OSPAR Commission.

1.11 Marine and Coastal Access Act 2009

1.11.1 The Marine and Coastal Access Act 2009 seeks to improve management and increase protection of the marine environment and improve recreational access to England’s coasts. Among the provisions, the Act will strengthen the network of Marine Protected Areas in England and Wales. The Act has created a duty on Ministers to designate new areas of national importance as Marine Conservation Zones to protect the range of marine habitats and species in England’s seas, which together with European Marine Sites, will contribute to a network of Marine Protected Areas (MPAs). The Act also provides for improved duties and powers for public bodies to manage Marine Protected Areas.

1.12 The OSPAR Commission 1992

1.12.1 The OSPAR Commission was born out the unification of the regulations devised in the Oslo Convention (1972) against dumping of waste at sea and the Paris Convention (1974), which also included dumping at sea from land based sources and waste from the offshore industry. The Commission lists a number of solely marine habitats and species that have been assessed as threatened and/or declining. These areas (or areas containing listed species) are then designated as MPAs and protected under conservation status. The OSPAR Commission has recently been updated by the introduction of Marine Conservation Zones (MCZs) that aim to replace the existing MPAs by the end of 2011. However, this regulation remains relevant until the MCZs are confirmed, as opposed to SACs and SPAs, the conservation areas that it protects are strictly marine. As of 2003, Tables 1 and 2 below list which habitats and species are included in the convention.

Table 1 Ecology and Nature Conservation Assessment - OSPAR List of Threatened and/or Declining UK Marine Habitats

<table>
<thead>
<tr>
<th>Carbonate mounds</th>
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<tr>
<td>Coral gardens</td>
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<tr>
<td>Deep-sea sponge aggregations</td>
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<tr>
<td>Intertidal mudflats</td>
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<td>Intertidal mudflats - sub-type estuarine</td>
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<td>Intertidal mudflats - sub-type marine</td>
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<tr>
<td>Intertidal <em>Mytilus edulis</em> beds on mixed and sandy sediments</td>
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<tr>
<td>Littoral chalk communities</td>
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<tr>
<td>Lophelia pertusa reefs</td>
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<td>Maerl beds</td>
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<tr>
<td><em>Modiolus modiolus</em> horse mussel beds</td>
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<tr>
<td>Oceanic ridges with hydrothermal vents/fields</td>
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<tr>
<td>Ostrea edulis beds</td>
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<tr>
<td>Invertebrates</td>
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<tr>
<td>Ocean quahog <em>Arctica islandica</em></td>
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<td>Dog whelk <em>Nucella lapillus</em></td>
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<td>Flat oyster <em>Ostrea edulis</em></td>
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*Fish species affected by fishing

1.13.1 This Directive aims to protect, maintain and enhance the ecological and chemical quality of all European waterways, and bring them all to the level of ‘good/high’ status. Waterways as determined here, include:

- Surface freshwater (including lakes, streams and rivers)
- Groundwaters
- Groundwater dependent ecosystems
- Estuaries
- Coastal waters out to one nautical mile from low-water

2 PLANNING POLICY CONTEXT

2.1 Overarching National Policy Statement for Energy (EN-1)

2.1.1 National Policy Statement (NPS) EN-1 ‘Overarching National Policy Statement for Energy’ (Department of Energy and Climate Change, 2011) sets out national policy for the energy infrastructure. It has effect on the decisions by the Infrastructure Planning Commission (IPC) on applications for energy developments that fall within the scope of the NPSs.

2.1.2 EN-1 contains policy and guidance on generic impacts in Part 5, including biodiversity, where Section 5.3 sets out the factors that the IPC will consider with regard to Ecology and Nature Conservation during the decision making process:

“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.

In having regard to the aim of the Government’s biodiversity strategy the IPC should take account of the context of the challenge of climate change: failure to address this challenge will result in significant adverse impacts to biodiversity. The policy set out in the following sections recognises the need to protect the most important biodiversity and geological conservation interests. 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.
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.

*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.*

2.2 Revised Draft National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)

2.2.1 The National Policy Statement (NPS), ‘*Revised Draft National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)*’ (Department of Energy and Climate Change, 2010), taken together with the ‘Overarching National Policy Statement for Energy’ (EN-1), provides the primary basis for decisions by the IPC on applications it receives for gas supply infrastructure and gas and oil pipelines.

2.2.2 Applicants should ensure that their applications, and any accompanying supporting documents and information, are consistent with the instructions and guidance given to applicants in this NPS, EN-1 and any other NPSs that are relevant to the application in question.

2.2.3 Part 2 (Assessment and Technology Specific Information) sets out the criteria for assessing impacts from the disposal of brine from Underground Natural Gas Storage and biodiversity impacts from gas pipelines.

2.3 Planning Policy Statement (PPS) 9: Biodiversity and Geological Conservation 2005

2.3.1 The statutory planning process requires that full account is taken of biodiversity, in accordance with international and national law. These requirements are set out in PPS9: Biological and Geological Conservation. Key features of PPS9 that seek to safeguard biodiversity include the following:

- Local authorities should maintain up to date information on the environmental characteristics of their area, including identifying areas of ancient woodland and other important habitats that are not already designated;
- Plan policies should aim to maintain, enhance, restore or add to biodiversity interests. They should promote opportunities for the incorporation of beneficial biodiversity in and around new developments;
- Planning decisions should aim to prevent harm to biodiversity. Where significant harm cannot be prevented, adequately mitigated against or compensated for, then planning permission should be refused;
Statutory Development Plans and Local Plans have a vital role to play in the protection and safeguard of important habitats and species.

2.4 The North West of England Plan, Regional Spatial Strategy to 2021

2.4.1 The following policies are relevant to Ecology and Nature Conservation (wholly or in part).

Policy RDF3: The Coast

“Plans and strategies should:

- enhance the economic importance of the coast and the regeneration of coastal communities in ways that safeguard, restore or enhance and make sustainable use of the natural, built and cultural heritage assets of the North West Coast and address issues of environmental decline and socio-economic decline, through support for:
  - the protection, development and diversification of the North West’s maritime economy;
  - regeneration based around opportunities for sustainable growth in coastal tourism and recreation;
  - regeneration opportunities associated with reuse of developed or under-used developed coast, former docks and other adjacent industrial areas;
  - improving the image of coastal resorts to attract inward investment and tourism;
  - the diversification of economic activity in coastal communities and rural coastal areas;

- define the undeveloped, developed (including despoiled), and remote coast at a strategic and local level using the criteria set out in paragraph 5.22;

- direct development requiring a coastal location, in all but exceptional circumstances, to the developed coast and safeguard the undeveloped and remote coast;

- protect the functional integrity of bays, estuaries and the inter-tidal areas immediately offshore;

- promote the conservation and enhancement of cultural, historical and natural environmental assets, including land and seascapes;

- promote the integrated planning and management of the coast (and adjacent sea areas and neighbouring coastal regions) and marine spatial planning of the Irish Sea;

- facilitate co-ordination and harmonisation between Local Development Frameworks and the wide range of plans, strategies and schemes which apply to the coastal zone.”
Policy EM1: Integrated Enhancement and Protection of the Region’s Environmental Assets

“The Region’s environmental assets should be identified, protected, enhanced and managed.

Plans, strategies, proposals and schemes should deliver an integrated approach to conserving and enhancing the landscape, natural environment, historic environment and woodlands of the region.

Plans and strategies should define spatial objectives and priorities for conservation, restoration and enhancement as appropriate, and provide area-based guidelines to direct decisions and target resources. These will be founded on a sound understanding of the diversity, distinctiveness, significance and sensitivity of the region’s environmental assets, and informed by sub-regional environmental frameworks. Special consideration will be given to the impacts of climate change and adaptation measures. Priority should be given to conserving and enhancing areas, sites, features and species of international, national, regional and local landscape, natural environment and historic environment importance.

Where proposals and schemes affect the region’s landscape, natural or historic environment or woodland assets, prospective developers and/or local authorities should first avoid loss of or damage to the assets, then mitigate any unavoidable damage and compensate for loss or damage through offsetting actions with a foundation of no net loss in resources as a minimum requirement.

With regard to specific elements of this integrated approach, the following should be taken into account:

Policy EM1 (B): Natural Environment

Plans, strategies, proposals and schemes should secure a ‘step-change’ increase in the region’s biodiversity resources by contributing to the delivery of national, regional and local biodiversity objectives and targets for maintaining extent, achieving condition, restoring and expanding habitats and species populations. This should be done through protecting, enhancing, expanding and linking areas for wildlife within and between the locations of highest biodiversity resources, including statutory and local wildlife sites, and encouraging the conservation and expansion of the ecological fabric elsewhere.

Broad locations where there are greatest opportunities for delivering the biodiversity targets are shown on the Indicative Biodiversity Resource and Opportunity Diagram. More specific locations will be informed by sub-regional biodiversity maps and frameworks of statutory and local wildlife sites.

Local authorities should:

- develop a more detailed representation of this spatial information for use in their Local Development Frameworks;
- and develop functional ecological frameworks that will address habitat fragmentation and species isolation, identifying and targeting opportunities for habitat expansion and re-connection. Active arrangements will be
needed to address ecological cross-boundary issues within areas such as the Pennines, Solway Firth, the Mersey Estuary, the Lune Estuary, the River Dee Estuary and the Cheshire Meres and Mosses, as well as including biodiversity policies in any developing Marine Spatial Planning System in the Irish Sea.

Plans, strategies, proposals and schemes should protect and enhance the region’s geological and geomorphological resources including statutory and local sites by contributing to the delivery of national, regional and local geodiversity objectives and targets.

**Policy EM1 (D): Trees, Woodlands and Forests**

Plans, strategies, proposals and schemes should:

- support the aims and priorities of the North West Regional Forestry Framework and sub-regional forestry strategies;
- encourage a steady targeted expansion of tree and woodland cover and promote sustainable management of existing woodland resources to enable the delivery of multiple benefits to society;
- support the continued role of community forestry;
- identify and protect ancient semi-natural woodland and veteran trees.”

### 2.5 Wyre Borough Local Plan

#### 2.5.1

The following policies are relevant to Ecology and Nature Conservation (wholly or in part).

**Policy SP14: Standards of Design and Amenity**

“The council will seek to apply consistent principles and high standards of design and amenity for all types of development. Where development proposals generally accord with the principles of the development strategy and with other relevant policies and proposals of this plan the following criteria will therefore also need to be satisfied:

A. The proposal should be compatible with adjacent existing land uses and any other relevant adjacent proposal of this plan;

B. The development should be acceptable in the local landscape in terms of its scale, mass, style, siting and use of materials, including any associated advertisement matter;

C. Any development proposal should respect and accommodate existing important features of the site such as preserved trees, biological and heritage features and public footpaths;

D. The proposal should enjoy satisfactory access, parking and servicing facilities which should not prejudice the provision of such facilities for neighbouring properties on an individual basis or as a joint arrangement;

E. The traffic associated with the development should not have any adverse impact on the local environs nor on the local highway network generally;
F. Suitable landscaping and/or screening should be employed to satisfactorily ameliorate the impact of the development and any necessary associated activities (for example parking, external storage);

G. Where appropriate, and particularly in those developments where access is intended for the general public, adequate provision should be made in the design for the special access needs of the physically impaired and for the safety and convenience of other vulnerable groups;

H. The interrelationship between buildings and open spaces in any layout should act to minimise opportunities for criminal activity, consistent with good layout and architectural design.”

Policy Env4: Sites of Special Scientific Interest

“Development within or adjacent to a site of special scientific interest, special protection area, ramsar site or special area of conservation, as identified on the proposals map or new sites subsequently designated, will only be permitted where the proposal will not destroy or adversely affect, either directly or indirectly, the site’s conservation interest except in those circumstances where:

A. In the case of a special protection area, ramsar site or special area of conservation the development is clearly substantiated by imperative reasons of overriding public interest. for all other sites of special scientific interest the proposal will only be permitted if other material factors outweigh the conservation considerations reflected in the designation, and

B. No alternative suitable and available site exists, and

C. Where practicable planning conditions can be applied to minimise the impact of the proposal and where required to secure compensatory habitat or management measures.”

Policy Env5: County Heritage Sites

“Development which would adversely affect a county heritage site as identified on the proposals map would only be permitted where other material matters outweigh the conservation interests reflected in the designation.”

Policy Env6: Species Protection Policy

“Development proposals which are likely to affect a protected species or its habitat will only be permitted in those instances where planning conditions or planning obligations can be applied to the proposal to secure the continued protection of the species.”

Policy Env7: Trees on Development Sites

“Proposals for development that are likely to affect trees within a site will only be approved in those circumstances:

A. Where the scheme includes measures for the selection, retention and protection of those trees which are healthy and have (or would have) a public amenity benefit, and

B. Where appropriate, new trees of a suitable species are proposed for planting in a scheme to be agreed with the local planning authority, and
C. Where the setting and character of trees (including where possible any trees adjacent to the site) is taken into account in considering the development of sites containing trees, and

D. Where development is sited so as to avoid damage to existing trees by ensuring adequate spacing, and

E. Where the proposals do not conflict with any other provisions of the local plan, and

F. Where the proposal does not have an adverse effect on the integrity of an ancient woodland.”

Policy Env15: Surface Water Run-off

“Development which will generate increased rates of surface water run-off will not be permitted where it would lead to adverse impacts such as an increased risk of flooding, river channel instability, or damage to habitats. Developers will be expected to cover the cost of assessing surface water drainage impacts and any appropriate mitigation works, including long-term maintenance.”

Policy Env17: Surface Water Protection

“Policy env17 development proposals will not be permitted where they are likely to have an adverse impact upon the quality or supply of ground water resources and planning conditions or planning obligations cannot be applied to secure water quality.”

2.6 Wyre Borough Local Development Framework

2.6.1 Wyre Borough Council is preparing a Core Strategy DPD and a Site Allocations DPD. The Core Strategy Issues and Options document was published in March 2008 and identifies a number of spatial planning objectives for the Borough. The following spatial planning objectives are relevant to Ecology and Nature Conservation (wholly or in part).

4.10 iv) Enhancing green infrastructure and Wyre's natural environment

We will ensure that Wyre’s natural environment will be protected and conserved. We will encourage a positive attitude to the development to appropriate, accessible open spaces within developments whilst ensuring accessibility to the natural environment. Where feasible we will encourage the development of more allotments as one way in which to promote and develop a sustainable healthy lifestyle.

2.7 Biodiversity Action Plans (BAPs)

2.7.1 Biodiversity Action Plans (BAPs) are strategies to conserve, protect and enhance habitats and species. The UK BAP sets out a national strategy for the conservation of biodiversity in Britain. Regional BAPs and Local BAPs (LBAPs) have also been produced to address biodiversity issues specific to particular areas in the UK. These are described in more detail below.
United Kingdom Biodiversity Action Plan (UK BAP)

2.7.2 The UK BAP is the UK Government’s response to the Convention on Biological Diversity (CBD) signed in 1992. It describes the UK’s biological resources and sets out a detailed plan for the protection of these resources. Habitat types and species are listed within the UK BAP with specific targets for their conservation. The UK BAP includes 1149 priority species and 65 priority habitats. Species Action Plans (SAPs) and Habitat Action Plans (HAPs) have been produced for a number of these species.

Lancashire Local Biodiversity Action Plan (Lancashire LBAP)

2.7.3 The Lancashire LBAP was produced in 2001 and sets out the conservation priorities and action needed to protect the biodiversity of the county. It is made up of many individual species and habitat plans. Each plan gives information on the status and threats to the species or habitat. The most important section of the plan details the conservation action required and the organisations responsible.

2.7.4 In conjunction with the above, the Lancashire Long List of BAP Species contains those species which occur in Lancashire and are of significance (as of January 2010) according to the BAP selection criteria listed on [http://www.lancspartners.org/lbap/bap_longlist.asp](http://www.lancspartners.org/lbap/bap_longlist.asp). The list indicates species over which particular consideration is needed whether through Development Control, land management or agri-environment schemes.