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Awel y Môr Offshore Wind Farm Limited
RWE Renewables
Windmill Hill Business Park
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Your ref: EN010112

19 September 2023

Dear Sir or Madam,

PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR AWEL Y MÔR OFFSHORE WIND FARM

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the report dated 20 June 2023 of the Examining Authority (“the ExA”) consisting a panel of five Inspectors; Jonathan Hockley (Panel Lead), Alex Hutson, Helen Cassini, Jason Rowlands and Richard Morgan, which conducted an Examination into the application (“the Application”) submitted on 14 April 2022 by Awel y Môr Offshore Wind Farm Limited (“the Applicant”) for a Development Consent Order (DCO) (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Awel y Môr Offshore Wind Farm and associated development (“the Proposed Development”).
- 1.2. The Application was accepted for Examination on 18 May 2022. The Examination began on 20 September 2022 and was completed on 20 March 2023. The Secretary of State received the ExA’s Report on 20 June 2023.
- 1.3. The Order, as applied for, would grant development consent for the construction and operation of an offshore energy generation station with electrical connections comprising: up to 50 offshore wind turbine generators; other offshore windfarm infrastructure including substation platforms; an interlink (by sub-sea cable) to the existing Gwynt y Môr offshore windfarm (to the east of the Proposed Development); up to two offshore export cable circuits to bring the power generated to shore; landfall and onshore electrical connections and cabling; and a new onshore substation (OnsS) to allow transmission of electricity to the National Grid.

- 1.4. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website¹ is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapter 5 to 12 of the ExA Report, and the ExA's summary of conclusions and recommendation in Chapter 13. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

2. Summary of the ExA's Report and Recommendation

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Aviation;
- Biodiversity, Ecology and Natural Environment;
- Flood Risk and Water Quality;
- Ground Conditions and Land Use;
- Historic Environment;
- Seascape, Landscape and Visual;
- Landscape and Visual
- Marine and Coastal Physical Processes
- Marine - Commercial Fisheries, Shipping and Navigation
- Marine - Natural
- Marine Water and Sediment Quality
- Public Health and Nuisance
- Socioeconomics
- Tourism and Recreation
- Traffic and Transport
- Other considerations

- 2.2. The ExA recommends at section 13.3.1 (page 158, volume 2) of the ExA Report that the Secretary of State should make the Order in the form attached to its Report.

- 2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

3. Summary of the Secretary of State's Decision

- 3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement (NPS). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.

- 3.2. The Secretary of State has carefully considered the ExA's Report and all other material considerations, including further representations received after the close of

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/wales/awel-y-mor-offshore-wind-farm/?ipcsection=overview>

the ExA's examination which are dealt with as appropriate in the sections of the decision letter below. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order **granting development consent** for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").

4. The Secretary of State's Consideration of the Application

- 4.1. The 2008 Act sets out a process for decision-makers to follow in considering applications for Nationally Significant Infrastructure Projects (NSIPs). The proposed Development is a NSIP as defined in sections 14 and 15 of the 2008 Act by virtue of being an offshore generating station within the territorial sea waters adjacent to Wales with a capacity of more than 350MW.
- 4.2. The Secretary of State has considered the ExA's Report and all other material considerations, which are dealt with as appropriate in the sections of the decision letter below.
- 4.3. The Secretary of State has had regard to the Local Impact Report (LIR) submitted by Denbighshire County Council (DCC), environmental information as defined in regulation 3(1) of the EIA Regulations, and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the NPSs EN-1, EN-3 and EN-5.
- 4.4. The Energy White Paper, Powering Our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The review of the energy NPS suite is currently underway and draft versions of the new NPSs were subject to a consultation which closed on 29 November 2021. A further consultation on revised drafts of the NPSs closed on 23 June 2023. The transitional guidance in the consultation paper makes clear that the assessment of any decision-making about NSIP applications in progress should continue to be made with reference to the currently designated NPS suite which remains in force and therefore forms the basis of the Secretary of State's consideration of the Application. Although the new NPSs are in draft form and have not been designated, the Secretary of State considers them to be important and relevant for the purpose of section 104 of the 2008 Act. As such, the Secretary of State has had regard to the draft energy NPSs in deciding the Application but does not consider there is anything within the drafts of the relevant NPS documents that would lead him to reach a different decision on the Application. The Secretary of State has also had regard to the British Energy Security Strategy (BESS) published on 7 April 2022, which outlined the steps to accelerate the government's progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.
- 4.5. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

- 4.6. 60 Relevant Representations (RRs) were made in respect of the Application by local authorities, community councils, other statutory consultees, non-statutory consultees and members of the public and businesses. Written Representations and oral submissions made during the Examination were also taken into account by the ExA.
- 4.7. Following receipt of the ExA's Report, the Secretary of State identified a number of issues upon which further information or clarification was required, and a consultation letter was issued to Interested Parties on 14 August 2023. The responses to the consultation have been incorporated into this decision letter in the relevant sections and have informed the Secretary of State's final decision on this Application.

The Proposed Development

- 4.8. The array of the Proposed Development, at its closest point, would be located 10.5km off the coast of North Wales at Llandudno, covering a maximum total area of 78km². This will comprise of up to 50 offshore wind turbines, landfall and onshore electrical connections and cabling, and a new OnSS to allow transmission of electricity to the National Grid. The Proposed Development has a capacity of more than 350 megawatts (MW).
- 4.9. A number of existing and proposed offshore windfarms are located off the north coast of Wales in the Irish Sea. These include existing offshore wind farm developments such as Burbo Bank; North Hoyle; Rhyl Flats, Gwynt y Môr, Duddon Sands, Walney (1-4) and Barrow and Ormonde ("existing wind farms") as well as proposed offshore wind farms such as Mona and Morgan. HyNet Carbon Dioxide, a pipeline for offshore storage is also proposed in the Irish Sea.
- 4.10. The Applicant also seeks compulsory acquisition (CA) and temporary possession (TP) powers, as set out in the draft Order submitted with the Application.

Aviation

- 4.11. NPS EN-1 states that it is essential that new energy infrastructure does not adversely affect the safety of UK aviation: where a proposed development may have an effect on aviation, e.g., civil or military or other defence interests, an assessment of potential effects should be set out in the Environmental Statement (ES) [ER 5.2.2]. It stipulates that any assessment should include the potential impacts upon the operation of communication, navigation and surveillance infrastructure, flight patterns (both civil and military), other defence assets and aerodrome operational procedures, and that it should assess the potential cumulative effects with other relevant projects in relation to aviation and defence [ER 5.2.3]. An applicant is also required to consult with the Ministry of Defence, the Civil Aviation Authority (CAA), National Air Traffic Services (NATS) and any aerodrome likely to be affected. It also sets out that the Secretary of State should be satisfied that any effects related to these areas have been addressed and that adverse effects have been minimised and that reasonable mitigation is carried out.
- 4.12. The ExA noted the Proposed Development's potential effects through the creation of aviation obstacles for helicopter operations were assessed as major adverse. However, the ES contains mitigation measures for this effect including: fitting multi-directional obstacle lighting on the periphery of the array, marking the turbines, and

issuing accurate charts of the array and spacing to helicopter bases. The ES considered with these measures the impact would be reduced to not significant [ER 5.2.18]. Cumulative effects with the existing windfarms were also considered to be minor adverse, with the mitigation outlined above [ER 5.2.19].

- 4.13. The ExA reviewed the effects of the Proposed Development and proposed mitigation measures in relation to any aviation impacts and agreed that impacts during construction and decommissioning of the Proposed Development would not be significant [ER 5.2.25] and that the mitigation measures for the aviation obstacles would reduce the risk to an acceptable level [ER 5.2.26]. In their RR, National Air Traffic Services (NATS) raised concern with the Proposed Development due to an ‘*unacceptable*’ impact on its infrastructure, but later withdrew their objection after agreement with the mitigation measures [ER 5.2.21].
- 4.14. The Secretary of State agrees with the ExA’s conclusions and is satisfied that the matter does not weigh against the Order being made.

Biodiversity, Ecology and Natural Environment

- 4.15. The ExA considered matters relating to offshore and onshore biodiversity, ecology and natural environment during the construction, operation, and decommissioning of the Proposed Development [ER 5.3.1].
- 4.16. NPS EN-1 sets out the policy considerations relevant for biodiversity impacts and requires the ES to clearly set out the effects on designated sites of ecological conservation importance, protected species, habitats and other species identified as being of principal importance for the conservation of biodiversity [ER 5.3.2].
- 4.17. NPS EN-3 refers to biodiversity considerations for marine mammals and birds maintaining that effects of a proposal on marine ecology and biodiversity should be considered by the decision maker and refers to an assessment of the effects of installing cable across the intertidal zone [ER 5.3.9]. Draft NPS EN-1 also describes biodiversity and geological considerations.
- 4.18. Impacts on National Site Network sites are discussed below in section 5 – Habitats Regulations Assessment.

Offshore Ornithology

- 4.19. The ExA examined the effects of the Proposed Development on offshore ornithology through the Applicant’s source-pathway-receptor model assessment. As any potential construction, operation, or decommissioning activity could impact a receptor depending on its pathway, the Applicant considered the effects and their significance on offshore ornithology [ER 5.3.59] [ER 5.3.60].
- 4.20. The Examination considered the following issues: Baseline Characterisation, Collision Risk Modelling (CRM), Highly Pathogenic Avian Influenza (HPAI), Pen-y-Gogarth / Great Orme’s Head Site of Special Scientific Interest (SSSI), and Mitigation and Monitoring Measures [ER 5.3.72].
- 4.21. The ExA concluded that that:

- a. the baseline characterisation was appropriate and that the scope, efforts and methods required for ornithological surveys has been discussed with the relevant statutory advisor and meet the needs of NPS EN-3;
- b. the CRM assessment has been carried out to a satisfactory standard, has taken regards to the advice from the statutory body (NRW) and satisfies NPS EN3. The CRM and EIA conclude that the significance of effects of collision risk were negligible to minor for all assessed sea birds (not significant in EIA terms);
- c. that the approach to the known spread of HPAI satisfied NPS EN-3;
- d. that there would be no significant effect on the breeding seabird features of Pen-y-Gogarth/ Great Orme's Head SSSI and that the approach meets the need of NPS EN-1 and NPS EN-3; and
- e. that the mitigation and monitoring measures outlined by the Applicant are appropriate and those which do not form part of the Order will be secured through the Marine Licence process (ML)

[ER 5.3.78] [ER 5.3.104] [ER 5.3.112] [ER 5.3.117] [ER 5.3.130].

- 4.22. The ExA was satisfied that the provisions of NPS EN-1 and NPS EN-3 and the relevant legislative and policy tests for offshore ornithology were met, and that the Applicant sufficiently assessed the relevant impacts of the Proposed Development. However, the impacts of the development and residual effects meant that the ExA could not ascribe an overall neutral position and therefore gave it limited weight against the Order being made [ER 5.3.136]

Offshore Marine Mammals

- 4.23. The ExA examined the effects of the Proposed Development on marine mammals through the Applicant's environmental impact assessment, based upon the magnitude of impact and sensitivity of receptors [ER 5.3.139].
- 4.24. The ExA considered the following issues: Mitigation and Monitoring Measures; Offshore Environmental Net Gain, and Cumulative Effects [ER 5.3.155].
- 4.25. The ExA concluded that the Mitigation and Monitoring approach by the Applicant is appropriate for EIA. This was endorsed by Natural Resource Wales (NRW), who confirmed that it was satisfied with the mitigation measures in the Applicant's ES [ER 5.3.180] [ER 5.3.176]. However, the ExA expressed that constraining the monitoring of underwater noise to only the first four of sixty-seven possible piles during the construction phase as a "*missed opportunity*" to gather further relevant data for future offshore wind farms, which would align more closely with provisions of NPS EN-3 [ER.5.3.180]
- 4.26. The ExA noted that the term Offshore Environmental Net Gain has been defined within NPS dEN-1 as being "*an approach to development that aims to leave the natural environment in a measurably better state than beforehand. Applicants should therefore not just look to mitigate direct harms, but also consider whether there are opportunities for enhancements*" but acknowledged that there is currently no formal

requirement by the Welsh Government or NRW for marine net gain in Wales [ER 5.3.190].

- 4.27. The ExA concluded on the matter of Cumulative Effects that the Proposed Development predicted no significant residual effects and was content that the relevant provisions of NPS EN-1 and NPS EN-3 for cumulative effects assessment had been met [ER 5.3.202].

Onshore Biology, Ecology and Natural Environment

- 4.28. The ExA examined the onshore effects of the Proposed Development during its construction, operation, and decommissioning on biodiversity, ecology and natural environment using the Applicant's environmental impact assessment and considered a variety of different issues [ER 5.3.222] [ER 5.3.225].
- 4.29. The ExA considered how the Proposed Development conserved and enhanced biodiversity, ecological networks, and resilience of ecosystems [ER 5.3.242] and concluded that the Proposed Development has successfully taken advantage of opportunities to do so [ER 5.3.253]. However, the ExA expressed its disappointment that the period of habitats aftercare of up to three years does not reflect the short-term impact duration of less than five years defined in the ES [ER 5.3.254], referencing the Norfolk Boreas and Norfolk Vanguard projects which had a landscape maintenance period of ten years after planting [ER 5.3.248]. In the ExA's view, the habitats aftercare would be at risk should disease or damage to habitat linkage occur beyond the aftercare period (e.g., year four) [ER 5.3.254].
- 4.30. The ExA examined the pre-construction effects on biodiversity, ecology and natural environment and concluded that it meets the overarching needs of NPS EN-1 and EIA process [ER 5.3.262].
- 4.31. With regards to the Applicant's approach to mitigation, compensation, enhancement and monitoring, the ExA was satisfied that the ES appropriately identifies the potential impacts of the Proposed Development on habitats and species, and that the proposed measures would help to conserve, enhance and provide opportunities to build in biodiversity as part of good design, such as at OnSS (as shown in the oLEMP) [ER 5.3.283]. The ExA was satisfied that the Applicant's approach conformed with the relevant sections of NPS dEN-1 and NPS EN-1, the latter of which (in the Applicant's view) provided that weight could be given to biodiversity benefit, and as such the Applicant suggested that moderate positive weight could be given in favour of the Proposed Development [ER 5.3.284] [ER 5.3.287]. The ExA considered this position and noted that whilst enhancement measures contribute to Welsh Government net benefit for biodiversity approach, the weighting for enhancement measures at the OnSS would be a matter for the ExA to consider in the context of onshore effects on biodiversity, ecology, and natural environment [ER 5.3.287].
- 4.32. The ExA also considered the effects of the Proposed Development on various habitats and species. The ExA noted that the Applicant would need to seek agreement with the landowners regarding the practicality of reinstatements or replacement of hedgerows [ER 5.3.296]. As mentioned previously, the ExA was also disappointed with the aftercare period for hedgerows and bats, stating the risk of disease or damage to the hedgerows would prevent success beyond the proposed

aftercare period, and an impact on flight lines and foraging for bats [ER 5.3.297] [ER 5.3.305]. Lastly, the ExA confirmed that no significant effects are likely on the local conservation status of great crested newts (GCN) metapopulations due to various mitigation and enhancement measures and agreed that there is potential to restore GCN St Asaph Business Park metapopulations to a favourable conservation status in the medium-long term due to these same measures [ER 5.3.313] [ER 5.3.314].

The Secretary of State's Conclusions

- 4.33. The Secretary of State has considered the ExA's conclusions on biodiversity, ecology and natural environment, and agrees that the Applicant's ES complies with the relevant policy provisions of NPS EN-1 and NPS EN-3, and appropriately identifies the potential impacts of the Proposed Development.
- 4.34. The Secretary of State concurs with the position of the ExA that the current legislative and policy tests have been met for marine mammals. The Secretary of State notes the ExA's comments regarding the missed opportunity of monitoring further piles, however, is satisfied that for the purpose of monitoring any mitigation, the current proposals are sufficient for EIA purposes. Whilst any stipulations to monitor further piles will not be incorporated into the DCO, the Secretary of State recommends that NRW consider this during the marine licence consent process.
- 4.35. The Secretary of State agrees that the proposed habitats aftercare of up to three years do not reflect the short-term impact duration of less than five years defined in the ES, which presents a risk of both disease and damage to beyond this period. As a result, the Secretary of State views that an extension of aftercare to five years would present a more ecologically appropriate period in light of the concerns raised relating to habitat restoration. The DCO has been amended accordingly.
- 4.36. Ultimately, the Secretary of State is satisfied with the conclusions of the ExA and views implementation of the measures outlined above as sufficient to deal with the respective issues. As such, she accords limited weight against the Order being made.

Flood Risk and Water Quality

- 4.37. NPS EN-1 emphasises the importance of development and flood risk being considered at all stages in the planning process to avoid inappropriate development in areas at risk of flooding [ER 5.4.2].
- 4.38. The ExA acknowledged that though offshore wind farms are less likely to be affected by flooding, NPS EN-3 requires Applicants to set out how the Proposed Development would be resilient to storms; and also states that the construction, operation, and decommissioning of offshore energy infrastructure can affect waves and tides, and thus turbines can cause indirect effects on flood defences [ER 5.4.8] [ER 5.4.9].
- 4.39. NPS EN-5 states that as climate change is likely to increase risks to the resilience of some infrastructure, Applicants should set out to what extent the Proposed Development is expected to be vulnerable, and how it would be resilient to issues such as flooding [ER 5.4.10].

- 4.40. The ExA noted the policy requirements of draft NPS EN-1, EN-3, and EN-5 in relation to flood risk and water quality are largely consistent with the extant versions [ER 5.4.11].
- 4.41. The Applicant's ES considered the effects on hydrology, hydrogeology and flood risk arising from the construction, operation, and decommissioning of the Proposed Development, including the potential for cumulative, inter-related and transboundary effects [ER 5.4.19].
- 4.42. The ES highlighted a number of flood risk and water quality effects relating to the construction, operation, decommissioning and cumulative impacts of the site [ER 5.4.24]. However, these were all deemed insignificant in EIA (Environmental Impact Assessment) terms [ER 5.4.28].
- 4.43. The ExA confirmed that the perceived level of flood risk to and caused by the substation would be low [ER 5.4.37]. Additionally, the Applicant's Planning Statement, which concluded that the Applicant's assessment has had full regard to the relevant requirements set out in legislative and policy requirements, identified no significant effects in relation to hydrology, hydrogeology, and flood risk, and thus should not weigh against the substantial benefits of the Proposed Development [ER 5.4.42]. The Secretary of State agrees.

River Clwyd Trenchless Crossing

- 4.44. The Applicant identified that four separate MLs would be required, separate to that originally submitted to NRW in June 2022 [ER 5.4.45]. NRW confirmed that these further MLs were to be submitted and determined under one application [ER 5.4.47].

Effects on Water Quality (Surface and Ground Water)

- 4.45. NRW noted that the proposed onshore works had the potential to impact water quality through several pathways, and that both the outline Construction Method Statement (oCMS) and outline Pollution Prevention and Emergency Incident Response Plan (oPPEIRP) contained pollution prevention methods, however it considered that further amendments were required to the oPPEIRP to avoid impacts on water quality [ER 5.4.52], and these amendments were made and submitted by the Applicant [ER 5.4.53].

Compliance with the Water Framework Directive

- 4.46. NRW noted that the Applicant had not demonstrated that the proposed works would not result in deterioration of the Water Framework Directive (WFD) quality elements and requested further work to confirm the site conditions and specific crossing methods proposed at each location [ER 5.4.57]. Additionally, the indirect effects of changes in hydromorphology on the WFD quality elements had not been appropriately assessed by the Applicant, and NRW requested a more detailed assessment of potential effects of all activities associated with watercourse crossings [ER 5.4.58].
- 4.47. In response, the Applicant confirmed that the oCMS had been updated to clarify that any non-trenchless cable route crossings options or culverted haul road would be

closely monitored to identify whether channel deformities were starting to occur, so that appropriate action could be taken [ER 5.4.59].

- 4.48. NRW was satisfied its concerns had been addressed by the Applicant in the oCMS, which would be secured via Requirement (R)10 of the draft DCO (dDCO) [ER 5.4.60]. The ExA was satisfied the on-going dialogue between the Applicant and NRW would ensure the Proposed Development would be compliant with the WFD and prevent deterioration of any relevant WFD quality elements [ER 5.4.62].

Disapplication of Flood Risk Activity Permit

- 4.49. The Applicant was initially seeking to disapply the requirement for a Flood Risk Activity Permit (FRAP) under Article 7(c) of the dDCO which provides for the application and modifications of legislative provisions. The ExA acknowledged NRW's view that it had not consented to the inclusion of the article, and it was necessary for NRW to retain its regulatory functions under the Environmental Permitting Regulations in respect of the works given its established expertise in the area [ER 5.4.69]. For these reasons, the Applicant agreed to remove Article 7(c) from the dDCO which the ExA was satisfied with. [ER 5.4.72].

Coastal Defence Works

- 4.50. The ExA noted DCC's concern, due to the proximity of the proposed landfall works, whether these would be able to co-exist with the coastal defence works. After an update from the Applicant both DCC and Conwy County Borough Council (CCBC) confirmed there would be no issues. The ExA was content that the landfall works would not interfere with the coastal defence works [ER 5.4.75] [ER 5.4.76].

Private Water Supply at Faenol Bropor / OnSS location

- 4.51. The Applicant was unaware that the well situated in the Faenol Bropor site it proposed to acquire was registered as a private water supply [ER 5.4.78]. The Applicant confirmed that the landowners would have an express access provision to allow them to access the land due to be purchased to maintain the well [ER 5.4.79]. The ExA considered the Applicant made "fair and reasonable" efforts to ensure the private water supply is maintained, and access provided during construction [ER 5.4.82].

The ExA's Conclusions

- 4.52. The ExA was satisfied the Applicant has sufficiently addressed the flood risk and possible effects on water quality associated with the Proposed Development and is content the issues do not weigh for or against the Order being made. The Secretary of State agrees with the ExA's conclusions [ER 5.4.100].

Ground Conditions and Land Use

- 4.53. NPS EN-1 recognises that an energy infrastructure project will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development [ER 5.5.3].
- 4.54. NPS EN-1 also requires applicants to minimise impacts on the best and most versatile agricultural land (BMVAL), defined as land in Agricultural Land Classification

(ALC) grades 1, 2 and 3a. Preference should be given to the use of land in areas of poorer quality, including ALC grades 3b, 4 and 5, unless this would be inconsistent with other sustainability considerations. Where development of agricultural land is demonstrated to be necessary, applicants should seek to use poorer quality land in preference to higher quality land [ER 5.5.4].

- 4.55. The Applicant's ES considered the effects on ground conditions and land use arising from the construction, operation, decommissioning and cumulative impacts of the Proposed Development [ER 5.5.14]. For the construction phase, the ES assessment identified effects ranging from negligible adverse to minor adverse [ER 5.5.18]. For the operation phase, effects ranged from negligible adverse to minor adverse [ER 5.5.19]. For decommissioning, impacts were assessed as being negligible to minor adverse [ER 5.5.20], and for cumulative effects, no adverse effects were identified [ER 5.5.21]. All such effects were considered not significant in EIA terms.
- 4.56. The Applicant's Planning Statement concluded that no significant effects have been identified and as such, effects on ground conditions and land use should not weigh against the substantial benefits of the Proposed Development [ER 5.5.27].

Soil Resources and Quality

- 4.57. The ExA was satisfied that the Applicant sought to minimise effects on soil quality through mitigation measures via R10 of the dDCO, which they deemed adequate to ensure no significant adverse effects from the Proposed Development [ER 5.5.160]. As such, the ExA considers no matters relating to soil resources which would weigh for or against the Order being made [ER 5.5.162].

Loss of BMVAL

- 4.58. The ExA noted that the majority of BMVAL land to be permanently lost would be subgrade 3b, which is poorer quality land [ER 5.5.162], and was satisfied that, in line with NPS EN-1, the Applicant had sought to minimise impacts on BMVAL and would utilise poorer quality land [ER 5.5.165]. The ExA gave limited weight to the loss of poor-quality agricultural land of ALC Grade 3b and the limited amount of Grade 3b land which would be permanently affected. [ER 5.5.166]. The ExA therefore attributed limited weight to matters relating to the effect on BMVAL against the Order being made [EE 5.5.167].

Effect on Landholdings

- 4.59. The ExA held that limited harm was identified in respect of most landholdings, as the majority of land would be required temporarily and would be returned to its original use, and measures within the Code of Construction Practice would provide sufficient levels of mitigation to minimise adverse effects [ER 5.5.168].
- 4.60. The ExA noted that although over 50% of the holding in relation to Faenol Bropor would be removed due to the OnSS and associated infrastructure, the compensation package payable to the landowner would adequately compensate for the impact [ER 5.5.169].

4.61. The ExA concluded that the effect of landholdings should be given limited weight against the Order being made [ER 5.5.172].

Ground Contamination and Mineral Safeguarding

4.62. The ExA concluded there are no matters relating to ground contamination [ER 5.5.175] and mineral safeguarding [5.5.176] which would weigh for or against the Order being made.

The Secretary of State's Conclusions

4.63. The Secretary of State agrees with the ExA's conclusions and is satisfied the Applicant's assessment complies with the relevant policy aims and requirements. The Secretary of State agrees with the ExA and accords matters relating to ground conditions and use limited weight against the Order being made.

Historic Environment

4.64. The Infrastructure Planning (Decisions) Regulations 2010 state that when deciding an application affecting a Listed Building or its setting, the decision maker must have regard to the "*desirability*" of preserving the building or any features of historic interest it possesses [ER 5.6.3].

4.65. NPS EN-1 NPS states that as part of the ES the Applicant should provide a description of the significance of the heritage assets affected by the Proposed Development and the contribution of their setting to that significance [ER 5.6.5].

4.66. The legislative framework for the protection of the Historic Environment in Wales is set by the Planning (Listed Buildings and Conservation Area) Act 1990, the Ancient Monuments and Archaeological Areas Act 1979, and the Historic Environment (Wales) Act 2016. Planning Policy Wales (11th Edition, February 2021) provides the national planning policy framework for the historic environment [ER 5.6.12].

Archaeological Effects in the Intertidal Area – Onshore Cable Route and the Site of Proposed OnSS

4.67. Through mitigation in R12 of the dDCO, the ExA concluded the Proposed Development would have no effect on archaeological interests onshore [ER 5.6.132].

4.68. Effects on Listed Buildings and Scheduled Monuments on the Onshore Cable Route and the OnSS

4.69. Due to the short term, reversible, nature of the proposed onshore cable works, the ExA concluded this aspect of the Proposed Development would not have an adverse impact upon listed buildings and scheduled monuments. The OnSS would have a minor adverse effect upon the Barn to the NW of Faenol Bropor and the Registered Park and Garden of Bodelwyddan Castle during construction and during operation. The proposed landscaping scheme would provide some mitigation, but this would be limited by the scale of the OnSS [ER 5.6.133].

Indirect Effects on Listed Buildings – Scheduled Monuments and Historic Landscapes of Wales, and the Effect on Llandudno

- 4.70. The ExA concluded that the offshore array during the operational phase would have negligible and minor adverse indirect effects on various listed buildings, scheduled monuments and Historic Landscape of Wales [ER 5.6.134] and moderate adverse effects, considered significant in EIA terms, upon Llandudno Pier (Grade II*), Puffin Island Tower and Remains of Church and Monastic Settlement Scheduled Monument [ER 5.6.136].

Offshore Direct Effects

- 4.71. The ExA concluded that with mitigation secured in the ML the Proposed Development would not have an adverse effect on offshore heritage assets [ER 5.6.138].

The Secretary of State's Conclusions

- 4.72. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would not lead to substantial harm or total loss of significance of any designated heritage asset (as defined in NPS EN-1) [ER 5.6.141]. However, the harm that would be caused to various heritage assets of minor to moderate adverse effect during the operational phase results in the Secretary of State ascribing moderate weight against the Order being made [ER 5.6.144]. The Secretary of State is aware that where there is an identified harm to a heritage asset, she must give that harm considerable importance and weight and she does so in this case. However, in light of the public benefit of the Development, the Secretary of State agrees with the ExA that the harm caused would have an adverse effect and ascribes it moderate weight against the Order being made.

Seascape, Landscape and Visual

- 4.73. NPS EN-1 states that applicants should carry out a landscape and visual assessment and report it in the ES. This should consider any landscape character assessments, relevant policies in local development plans, and identified impacts of the Proposed Development [ER 5.7.3].
- 4.74. Paragraph 5.9.18 of NPS EN-1 sets out the following guidance for decision-makers: "All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The [Secretary of State] will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project."
- 4.75. NPS EN-3 states that where a proposed offshore wind farm will be visible from the shore, a seascape and visual impact assessment should be undertaken including an assessment of the limit of visual perception from the coast, individual characteristics of the coast which affect its capacity to absorb a development, and how people perceive and interact with the seascape [ER 5.7.11].
- 4.76. The Applicant's Seascape, Landscape and Visual Impact Assessment (SLVIA) assessed the effects of the offshore elements of the Proposed Development during its construction, operation, and decommissioning [ER 5.7.18]. The SLVIA² reported a number of significant and non-significant adverse effects within statutory

² Table 6, page 179

designated landscapes including Isle of Anglesey (IoA) Area of Natural Beauty (AONB) and Eryri National Park (ENP), during construction, operation, and decommissioning of the offshore works on seascape character, landscape character, representative viewpoints, views from settlements and views from footpaths / cycleways / roads [ER 5.7.39].

Assessment of Seascape, Landscape and Visual Effects

- 4.77. NRW raised concerns around the numerous and extensive significant adverse effects on seascape, landscape and visual receptors within the IoA AONB and ENP and within their settings, adverse effects on the special qualities of the IoA AONB and ENP and conflict with the statutory purpose to conserve and enhance the natural beauty of these designated areas. [ER 5.7.50]. With regard to Viewpoint (VP) 36, the Applicant assessed the effects from this viewpoint as moderate adverse and not significant. However, for the reasons given, the ExA concurred with NRW that visual effects would be significant (albeit moderate adverse) [ER 5.7.63].
- 4.78. Notwithstanding the above consideration of VP 36, the ExA considered the Applicant had adequately demonstrated effects on ENP Landscape Character Area (LCA) 01, within which VPs 12, 36, 38 and 40 are located, to be not significant. This is taking into account that landscape character effects are not derived purely as a result of visibility, the overall Zone of Theoretical Visibility extents within the LCA, existing human influences along the coastline and limited effects on characteristics relating to tranquillity, remoteness and wildness [ER 5.7.64].

Effects on Designated Landscapes

- 4.79. The ExA recognised the Proposed Development would give rise to a number of significant adverse effects during construction, operation, and decommissioning of the offshore works on seascape, landscape and visual receptors, some of which are coincidental with statutory designated landscapes, including IoA AONB. Significant effects would also arise for some of the special qualities of the IoA AONB. In addition, some significant adverse effects are coincidental with receptors within non-statutory designated landscapes, including the Great Orme Heritage Coast (GOHC) and the North Anglesey Heritage Coast (NAHC) [ER 5.7.72].
- 4.80. There would also be a number of non-significant adverse effects on seascape, landscape and visual receptors, some of which are coincidental with receptors within nationally designated landscapes, including IoA AONB, ENP and Clwydian Range and Dee Valley (CRDV) AONB. There would also be some non-significant adverse effects on some of the special qualities of ENP and CRDV AONB. In addition, some non-significant adverse effects are coincidental with receptors within non-statutory designated landscapes, including GOHC and NAHC [ER 5.7.73].
- 4.81. The ExA considered that whilst the Applicant has sought to avoid compromising the statutory purposes as far as possible, given the harms identified, the Proposed Development would fail to conserve or enhance the natural beauty of the IoA AONB, CRDV AONB and ENP designated landscapes, in conflict with this statutory purpose. The ExA considered this would be more so for the IoA AONB and ENP given that significant effects have been reported in relation to these designated landscapes [ER 5.7.74].

- 4.82. The ExA was satisfied that significant effects could not be mitigated through a small reduction in the scale of the Proposed Development [ER 5.7.78].

Landscape Enhancement Scheme

- 4.83. The Applicant's note on the weight to be given to landscape enhancements accepts the Proposed Development cannot fully mitigate the adverse effects on designated landscapes without affecting the economic viability of the project. As such, the landscape enhancement scheme through R26 of the dDCO would compensate for significant adverse effects relating to IoA AONB, ENPA and GOHC by strengthening, reinforcing or enhancing their features, distinctiveness, special qualities or sense of place over the long-term [ER 5.7.85]. The Applicant's principles document sets out details of this process, detailing the mechanism for the delivery of the scheme, a proposed fund size of £5,000,000, a payment profile of 30 years and a steering group involving the Isle of Anglesey County Council (IoACC) ENPA, NRW, CCBC and DCC, as well as other Interested Parties (IPs) The Secretary of State considers this an acceptable approach.
- 4.84. The ExA considered that the proposed Landscape Enhancement Scheme would assist with compensating for significant adverse effects on the relevant designated landscapes. NRW expressed their preference to see initial payments made at the construction phase as opposed to when the development is operational, as the significant effects were reported during the construction phase [ER 5.7.84]. The ExA noted that this could be negotiated between the parties at a later date and considered it a reasonable request, given that significant adverse effects would occur during the construction phase [ER 5.7.86].
- 4.85. The ExA noted that NPS EN-1 recognises that a proposed project being visible from within a designated area should not in itself be a reason for refusing consent. The ExA accepted the Applicant had aimed to avoid, as far as possible, compromising the purposes of designation and had had regard to sensitive design taking into account various siting, operational, and other relevant constraints. The ExA was mindful that the geographical extents of adverse effects on designated landscapes would be relatively limited when considering the IoA AONB, CRDV AONB and ENP designations as a whole and that the Proposed Development would conflict with only a limited number of their respective special qualities. The ExA considered the Proposed Development would be in general conformity with policy requirements [ER 5.7.94]. Nonetheless, having regard to the harms identified, the ExA attributed substantial weight against the Order being made to adverse effects on seascape, landscape and visual matters relating to the proposed offshore works [ER 5.7.95].
- 4.86. The proposed landscape enhancement scheme, secured under R26 of the rDCO, would compensate for some of the seascape, landscape and visual harms identified and would provide benefits to designated landscapes over the longer term, including in respect of some of their special qualities. The ExA afforded moderate weight to the benefits of the landscape enhancement scheme for the making of the Order [ER 5.7.96].
- 4.87. The landscape enhancement scheme would not strictly mitigate the harm caused by the Proposed Development to the identified seascape, landscape and visual receptors, as it would not screen or minimise the visual effects of the proposed Wind

Turbine Generators (WTG) on the receptors. However, it could provide other benefits and would potentially enhance the identified receptors and their special qualities. This reduced the overall weight the ExA ascribed to harm arising from the adverse effects on seascape, landscape and visual matters from the Proposed Development [ER 5.7.97].

The Secretary of State's Conclusions

- 4.88. The Secretary of State has considered the ExA's conclusions and agrees that the current effects posed by the Proposed Development are significantly adverse and as such, accords it substantial weight against the Order being made.

Landscape and Visual

- 4.89. NPS EN-1 states that applicants should carry out a Landscape Visual Impact Assessment (LVIA) which should take into account any landscape character assessments and any relevant policies in local development plans [ER 5.7.3].
- 4.90. NPS EN-3 notes that the layout of wind turbines should be designed appropriately to minimise harm [ER 5.7.13]. It also sets out that proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity [ER 5.3.10].
- 4.91. NPS EN-5 recognises that new substations and other above ground infrastructure that form connection, switching and voltage transformation points can give rise to landscape and visual impacts [ER 5.7.14].
- 4.92. The National Planning Policy Framework sets out that policies and consent decisions should contribute and enhance the natural environment by recognising the intrinsic character and beauty of the countryside [ER 5.7.5].
- 4.93. The LVIA assessed the potential adverse landscape and visual effects during its construction, operation, and decommissioning [ER 5.8.5], and explored different mitigation methods (e.g., selection of the Export Corridor Cable (ECC) route to avoid tree and hedgerow loss during construction / restoring land along the ECC route during operation) [ER 5.8.19] [ER 5.8.20].
- 4.94. The LVIA highlighted a range of likely significant and non-significant adverse landscape and visual effects during the construction of the ECC route and the construction and operation of the OnSS [ER 5.8.21].
- 4.95. The Applicant's visual assessment identified significant effects during construction of the OnSS and at year 1, with effects reducing to not significant at year 15 as a result of the establishment and growth of landscape and woodland planting [ER 5.8.31]. DCC and North Wales Local Planning Authorities (NWLPA) highlighted the lack of visual assessment of the construction and operation of the OnSS on the occupiers of Faenol Bropor and users of the Glascoed Nature Reserve. Additionally, both raised the long-term aftercare periods, preferring a 15-year period for the replacement of any planting associated with the OnSS site rather than the 5-year period in R9 of the dDCO [ER 5.8.25].

- 4.96. The Applicant maintained the period was adequate given that 5-years is generally considered a standard length of time to determine whether planting had established or had failed and required replacement [ER 5.8.39]. The ExA ultimately concurred with this view, concluding that a 5-year landscape period, in combination with a Landscape and Ecology Management Plan (LEMP) detailing planting, management and maintenance measures, would be sufficient to ensure the likely long-term effectiveness of landscaping [ER 5.8.41].
- 4.97. Following a question from the ExA the Applicant included height parameters for buildings and structures associated with an Air Insulated Substation (AIS) in the dDCO [ER 5.8.32].
- 4.98. Mr Davies, a local resident, raised concerns around visual effects and obstructions from his property from the construction and operation of the OnSS [ER 5.8.28]. The Applicant highlighted that provision would be made for local residents to comment on landscape proposals and that the proposed woodland belt would be set back to provide screening of the OnSS whilst not impeding large proportions of the current view. The ExA considered this be an adequate outcome [ER 5.8.33].
- 4.99. Charlotte Bowers raised concerns around loss of green belt land and visual effects [ER 5.8.27]. The Applicant clarified that the OnSS would not occupy any land designated as a green belt, highlighting that with the restoration of land along the ECC route, reinstatement of hedgerows, planting of hedgerow trees and landscape and ecological mitigation and enhancement within the OnSS site, green corridors would be maintained or created, and loss of hedgerows mitigated [ER 5.8.35]
- 4.100. DCC and NRW had signed a Statement of Common Ground (SoCG) with the Applicant agreeing all matters relating to LVIA matters in respect of the onshore works [ER 5.8.37].

The ExA's Conclusions

- 4.101. The ExA was satisfied that the Proposed Development would accord with NPS EN-1, NPS EN-3 and NPS EN-3 (and with the drafts of these NPSs) and with DCCLDP Policies VOE2 and VOE10 in relation to landscape and visual matters of onshore works [ER 5.8.45].
- 4.102. Noting that the onshore elements of the ECC and OnSS would give rise to some localised significant effects on landscape features, landscape character and visual receptors, as a result of the maturing of proposed landscape planting, the ExA was satisfied that such significant effects would diminish considerably by year 15 for most receptors [ER 5.8.42].
- 4.103. The ExA acknowledged that residual significant adverse effects in respect of landscape and visual matters would be limited and localised: it attributed moderate weight against the Order being made [ER 5.8.45]. The Secretary of State agrees with the conclusions of the ExA.

Marine and Coastal Physical Processes

- 4.104. NPS EN-1 states that applicants must consider the impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure [ER 5.9.2]. It also states the Government's aim is to ensure that our coastal communities continue to prosper and adapt to coastal change [ER 5.9.3].
- 4.105. NPS EN-3 discusses that the decision maker should be satisfied that the methods of construction and use of materials reasonably minimise potential impacts on the receiving physical environment [ER 5.9.6]. It also states the applicant should consider the trenching of cables to an appropriate depth and use scour protection techniques around offshore structures [ER 5.9.7].
- 4.106. The Welsh National Marine Plan states applicants should demonstrate that they have considered the impacts of climate change and have incorporated appropriate adaptation measures [ER 5.9.10]. It also discusses that applicants should, in order of preference, aim to avoid, minimise, and mitigate cumulative effects [ER 5.9.11].
- 4.107. The Applicant's ES considers the potential impacts of the Proposed Development on marine and physical process [ER 5.9.19 et seq]. Mitigation measures are set out in the Schedule of Mitigation and Monitoring and ES [ER 5.9.29].

Secondary Scour Protection

- 4.108. NRW raised concerns of the uncertainty around the dimension of secondary scour that would occur and requested post-construction monitoring. The Applicant confirmed monitoring was anticipated to be done and would be secured by the ML. The ExA was content with this provision [ER 5.9.37].

Dredge and Disposal of Dredge Material

- 4.109. NRW noted it was not clear if the offshore ECC was to be licenced as a disposal site in the ML application associated with the array area, and the Applicant replied that they would apply for a disposal licence or other required licences if that was required. The ExA was satisfied with the Applicant's response [ER 5.9.41].

The Secretary of State's Conclusions

- 4.110. The ExA reviewed the effects of the Proposed Development in relation to marine and coastal physical processes and was satisfied the Applicant had addressed the effects and included mitigation measures. Whilst mitigation sits outside the Examination process, the ExA was content that the ML functions would address these [ER 5.9.42]. The ExA was satisfied the Applicant had fully addressed potential climate changes within their assessment [ER 5.9.43]. In respect to cumulative impacts two impacts were not considered due to lack of available information which the ExA was content with [ER 5.9.44].
- 4.111. The Secretary of State agrees with the ExA's conclusions and is satisfied that the matter does not weigh against the Order being made.

Marine – Commercial Fisheries, Shipping and Navigation

- 4.112. In relation to fishing, NPS EN-3 states applicants should conduct detailed surveys of the Proposed Development on effects on fish stocks and consultation should occur around the potential extents of safety zones and the effects on fishing activity [ER 5.10.3]. It also states the decision maker should be satisfied that the site selection process reasonably minimises adverse impacts on fish stocks [ER 5.10.5]. NPS EN-3 discusses that mitigation proposals should result from the consultation between an applicant and the fishing industry, and where reasonably possible be designed to bring any potential medium and long-term positive benefits to the fishing industry and fish stocks [ER 5.10.6].
- 4.113. In relation to shipping and navigation NPS EN-3 states a proposed development will need to co-exist with navigation uses of the sea and for the applicant to undertake a Navigational Risk Assessment (NRA) [ER 5.10.11] [ER 5.10.12]. It also states the decision maker should not grant development consent where interference with the use of recognised sea lanes essential to international navigation is caused, and wider disruption to or economic loss to the shipping and navigation industries should be minimised [ER 5.10.13]. NPS EN-3 discusses the continuity of search and rescue activities and effects on recreational craft should be considered; and any unacceptable risks to navigational safety following mitigation measures should result in the consent application not being granted [ER 5.10.14].
- 4.114. The Applicant's ES considers the potential impacts of the Proposed Development on commercial fisheries, shipping, and navigation [ER 5.10.35 et seq].

Fishing - Baseline Characterisation, Consultation, and Methodology

- 4.115. Manx Fish Producers Organisation, the Isle Of Man and Janet Finch-Saunders raised concerns that small vessels below 15m in length were not appropriately taken into consideration in the Applicant's assessment [ER 5.10.51 et seq]. The Applicant addressed this concern by improving its understanding of fishing activity below 15m in length by site-specific marine traffic survey data, referencing to fisheries landing statistics, individual interviews with fishermen and fisheries group meetings [ER 5.10.51 et seq]. The ExA was satisfied with this response [ER 5.10.61].

Fishing - Commercial Fish Stocks

- 4.116. Mr Carl Davies, the Isle of Man and Janet Finch-Saunders raised concerns that during construction the Proposed Development would result in a fall in fish stock [ER 5.10.62 et seq]. The ExA also wrote to the Applicant [ER 5.10.63]. The Application responded stating the Proposed Development during construction would have a moderate impact on potting fishery which would be reduced to minor adverse through mitigation by incorporating a Fisheries Liaison and Co-existence Plan (FLCEP), co-operation agreements and associated payment [ER 5.10.69]. The ExA was content that with relevant mitigation the residual effects on commercial fisheries were not significant, consideration is to be given to the choice of cable protection material, and post consent the Applicant would consider design that could provide ecological enhancement for fishing. The ExA noted a commitment, rather than consideration, to medium and long-term benefits would have been preferable [ER 5.10.74].

Shipping and Navigation - Safety zones, spacing layout of structures and shipping routes

4.117. Trinity House, and Maritime and Coastguard Agency (MCA) responded that they were satisfied with the safety zone distances and layout, and the Proposed Development did not interfere with sea shipping lanes [ER 5.10.95 et seq]. The ExA raised questions to the Applicant regarding impacts from a construction base port facility and the Applicant responded stating industry standard mitigations would be used such as marine coordination, and compliance with flag state regulations and that the selection of construction and operational port would be made post consent [ER 5.10.102].

Shipping and Navigation - Navigational Risk Assessment

4.118. Trinity House and MCA responded that they were satisfied with the NRA [ER 5.10.114]. The UK Chamber of Shipping (CoS) raised safety concerns regarding likely allision incidents however the ExA noted these concerns are to be dealt with as part of a ML [ER 5.10.108]. The Applicant replied stating the number of incidents were low, and the majority of the impact absorbed by the WTG and foundations. The UK COS recognised the low number of incidents, and stated their concern would have no material impact on the assessment conclusion [ER 5.10.108]. The ExA was content the NRA had been conducted to a satisfactory standard and the applicant supplied a series of marine templates plans to be secured with a ML [ER 5.10.114 et seq].

The Secretary of State's Conclusions

4.119. The ExA was content the Applicant had addressed the impacts of the Proposed Development in relation to commercial fisheries, shipping, and navigation [ER 5.10.76 and 5.10.119]. The ExA stated the Applicant had undertaken relevant consultation and NRA, identified any sea lane and considered safety zones, and demonstrated continuity of search and rescue activities and considered MCA guidance and International Maritime Organisation guidance [ER 5.10.116 et seq]. Mitigation measures are set out in the Schedule of Mitigation and Monitoring, the ES and ML principles. Mitigation measures are to be secured as part of a ML [ER 5.10.118].

4.120. The Secretary of State acknowledges the ExA's view that a commitment rather than a consideration to implement mitigation measures to enhance where reasonably possible any potential medium and long-term benefits to the fishing industry and commercial fish stocks would be beneficial. However, the Secretary of State considers that as residual effects on commercial fisheries are not significant in EIA terms with the relevant mitigation, it does not impact the decision-making i.e., is not necessary for EIA to be met. The Secretary of State recommends that NRW consider including a provision in the ML which encourages the Applicant to commit towards implementing the relevant mitigation measures.

4.121. The Secretary of State agrees with the ExA's conclusions and is satisfied that the matter does not weigh against the Order being made.

Marine – Natural

- 4.122. NPS EN-1 states that as a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives and where significant harm cannot be avoided, then appropriate compensation measures should be sought [ER 5.11.2].
- 4.123. NPS EN-3 states that evidence from existing offshore wind farms demonstrates that it has been possible to locate wind farms in ecologically sensitive areas where careful siting of turbines has been undertaken following assessments and that applicants should evaluate the effects on offshore ecology and biodiversity for all stages of the lifespan of the proposed offshore wind farm [ER 5.11.3].
- 4.124. In regard to fish, NPS EN-3 requires that the applicant should identify fish species that are the most likely receptors of impacts with respect to spawning grounds, nursery grounds, feeding grounds, over-wintering areas for crustaceans and migration routes, and considers that any consent that is granted should be flexible to allow for necessary micro siting of elements of the proposed windfarm to allow for unforeseen events. It also states that applicants should assess the effects on the subtidal environment from habitat loss due to foundations and seabed preparation, predicted scour, scour protection and altered sedimentary processes and on the benthic environment from extendible legs and anchors of construction vessels and habitat disturbance in the intertidal zone during cable installation and removal [ER 5.11.4]. The ExA acknowledged that much of the Draft NPS EN-3 mirrors the extant NPS EN-3 [ER 5.11.5].
- 4.125. The Applicant's ES considers the potential effects of the Proposed Development on benthic species, habitats, fish and shellfish [ER 5.11.1].

Benthic Ecology

- 4.126. The ExA raised concerns that noise impacts on benthic ecology had not been assessed and were scoped out. The Applicant explained that the industry recognised there are no likely significant effects to benthic ecology resources. The ExA acknowledged this [ER 5.11.18] [ER 5.11.20].

INNS and Biosecurity

- 4.127. The ExA noted and endorsed the view of NRW that the magnitude of impact from the potential introduction of marine invasive non-native species (INNS) should be low as there is a continuous risk of INNS being introduced [ER 5.11.21], and thus not significant in EIA terms.

Cumulative Impacts

- 4.128. NRW considered the Applicant's fish population data including swim speeds, overstated spawning fish fleeing receptors and led to unrealistic fish population scenarios [ER 5.11.27]. The Applicant noted that despite this, there was no dispute on the conclusions of the ES [ER 5.11.28].

4.129. NRW also requested further information on how the potential cumulative impacts to fish populations over multiple spawning seasons from underwater noise arising from consecutive construction activity from several offshore windfarm projects in Liverpool Bay had been considered [ER 5.11.27]. The Applicant produced a Cumulative Effects Assessment (CEA) which resolved the issue to NRW's satisfaction [ER 5.11.30].

The ExA's Conclusions

4.130. The ExA reviewed the effects of the Proposed Development in relation to marine impacts and held that for benthic ecology and fish and shellfish, the impacts across all phases would not be significant due the proposed mitigation measures secured within the ML [ER 5.11.34] [ER 5.11.35]. The ExA concluded that issues relating to marine natural impacts hold limited weight against the Order being made [ER 5.11.36].

The Secretary of State's Conclusions

4.131. The Secretary of State agrees with the reasonings of the ExA in its conclusion and as such accords limited weight to the matters relating to Marine Natural Water against the Order being made.

Marine Water and Sediment Quality

4.132. NPS EN-1 states that Infrastructure development can have adverse effects on the water environment such as coastal waters. Furthermore, it highlights the need for assessment of the effects of development on water quality, water resources and the physical characteristics of the water environment [ER 5.12.2].

4.133. NPS EN-3 identifies the need to consider the effects of marine development in terms of water quality, waves, tides, scour, sediment transport and suspended solids. Additionally, it states that Secretary of State should be satisfied that the methods of construction and use of materials reasonably minimise potential impacts on the receiving physical environment [ER 5.12.5].

4.134. The Applicant undertook an assessment on marine water and sediment quality, and this was set out in the Environmental Statement. A Zone of Influence was defined which identified marine water and sediment quality receptors with the potential to be significantly affected by the Proposed Development. [ER 5.12.11] to [5.12.13].

4.135. Assessments were undertaken on the impacts of the construction, operation, decommissioning and cumulative impacts of the proposed development on water and sediment quality. There were range of effects identified for these different impacts but overall, for all phases it was concluded the effects identified were not significant in EIA terms [ER 5.12.17- 5.12.21]. The submitted planning statement also concluded that no significant effects were identified on marine water and sediment quality [ER 5.12.27]

4.136. It is noted that NRW disagreed with the assessment conclusions made in relation to sediment bound contaminants and requested further information. In addition, NRW requested a Report to Inform Appropriate Assessment (RIAA) should also be updated to reflect the new information. The Applicant submitted a clarification note

but did not consider it necessary to update the RIAA. Following submission of the information, NRW confirmed they were satisfied that there was no longer a risk from contaminated sediment. A SoCG on all matters in respect of marine water and sediment quality had been agreed with the Applicant [ER 5.12.30] to [5.12.34], [ER 5.12.28].

- 4.137. NRW did not agree that the impact of accidental spills could be considered temporary and therefore negligible adverse in EIA terms. The Applicant submitted a clarification note and both parties came to agree that the residual effect could be considered negligible adverse provided that mitigation commitments in both the ES and the clarification note were incorporated into a Project Environmental Management Plan and Marine Pollution Contingency Plan and delivered post-consent [ER 5.12.40] to [ER 5.12.43].
- 4.138. The ExA was satisfied the Proposed Development would be compliant with the objectives of the WFD and would not result in the deterioration in any designated water body or protected area and would not jeopardise the attainment of good status or the potential to achieve good ecological and chemical status [ER 5.12.49.]
- 4.139. The ExA was satisfied that the Applicant fully addressed possible marine water and sediment quality effects associated with the construction, operation and decommissioning of the Proposed Development and that such risks can be satisfactorily mitigated and managed [ER 5.12.52].
- 4.140. The ExA concluded that the Applicant's assessment of marine water and sediment quality and proposed mitigation measures, which would be secured in the ML, complies with the policy aims of NPS EN-1 and EN-3 and where relevant, the draft NPS EN-1 and EN-3. Therefore, the ExA stated that there were no matters relating to marine water and sediment quality which would weigh for or against the Order being made [ER 5.12.52] to [5.12.54].

Secretary of State's Conclusions

- 4.141. The Secretary of State agrees with the ExA's conclusions and is satisfied that the Applicant's assessment complies with the relevant policy aims and requirements. As such, there are no matters relating to marine water and sediment quality which would weigh for or against the Order being made.

Public Health and Nuisance

Noise and Vibration

- 4.142. NPS EN-1 acknowledges that excessive noise and vibration can have wide ranging impacts on quality of life, health, use and enjoyment of areas [ER 5.13.7], and that development consent should not be granted unless significant impacts on health and quality of life can be avoided [ER 5.13.13]. Additionally, that the ES should include a noise assessment, as per NPS EN-3 [ER 5.13.16].
- 4.143. NPS EN-1 sets out that significant health impacts arising from those projects are likely to be subject to separate regulation which would constitute effective mitigation and

that it is unlikely, therefore, that health impacts would constitute a reason to refuse consent or require mitigation under the 2008 Act.

- 4.144. Further, NPS EN-5 refers to electromagnetic fields generated by electric cables and their potential impacts on human health. While primarily an issue for overhead lines (the potential for electromagnetic fields is diminished by the undergrounding of electric cables), NPS EN-5 requires the decision-taker to be satisfied that any infrastructure proposal is in accordance with the International Commission on Non-ionizing Radiation Protection (ICNIRP) Guidelines. NPS EN-5 concludes that where exposure to electromagnetic fields is within ICNIRP reference levels, then mitigation is unlikely to be required.
- 4.145. The ExA was satisfied the Applicant fully assessed the possible noise and vibration effects associated with construction, operation, and decommissioning of the Proposed Development and held that the identified risks could be satisfactorily mitigated through R15 of the rDCO [ER 5.13.122].
- 4.146. The ExA accorded limited weight against the Order being made. The Secretary of State agrees with this conclusion [ER 5.13.124].

Air Quality

- 4.147. NPS EN-1 states that infrastructure development can have adverse effects on air quality in the construction, operation, and decommissioning phases [ER 5.13.125].
- 4.148. The ExA was satisfied that the Applicant fully assessed the possible air quality effects associated with construction, operation, and decommissioning of the Proposed Development and that the identified risks could be satisfactorily mitigated through R10 of the rDCO [ER 5.13.177].
- 4.149. The ExA accorded limited weight against the Order being made. The Secretary of State agrees with this conclusion [ER 5.13.179].

Light Pollution

- 4.150. NPS EN-1 states that infrastructure development has the potential for the release of a range of emissions including artificial light, and that the applicant should assess the potential for artificial light to have a detrimental impact [ER 5.13.180].
- 4.151. The ExA was satisfied that the Applicant fully assessed the possible light pollution effects associated with construction, operation, and decommissioning of the Proposed Development and that the identified risks could be satisfactorily mitigated through R19 of the rDCO [ER 5.13.203].
- 4.152. The ExA accorded limited weight against the Order being made. The Secretary of State agrees with this conclusion [ER 5.13.205].

Human Health

- 4.153. NPS EN-1 recognises that energy production has the potential to impact on the health and wellbeing of the population and that, although access to energy is clearly

beneficial to health, production and distribution may have negative impacts [ER 5.13.206].

- 4.154. The ExA was satisfied that the Applicant has fully addressed the possible human health effects associated with construction, operation, and decommissioning of the Proposed Development and held that the identified risks could be satisfactorily mitigated through R21 and R22 of the rDCO [ER 5.13.246].
- 4.155. The ExA has accorded limited weight against the Order being made [ER 5.13.248]. The Secretary of State agrees with this conclusion.

Common Law Nuisance and Statutory Nuisance

- 4.156. NPS EN-1 states that a range of emissions have the potential to cause common law nuisance or statutory nuisance under Part III Environmental Protection Act 1990 [ER 5.13.249].
- 4.157. The ExA examined all the Applicant's submitted assessments and noted there were no substantive submissions by Interested Parties in respect of common law or statutory nuisance during the Examination [ER 5.13.253].
- 4.158. The ExA found that the issue of nuisance does not weigh for or against the Order being made [ER 5.13.256].

The Secretary of State's Overall Conclusions

- 4.159. The Secretary of State notes the ExA's commentary on the overall impact of the Proposed Development to human health and nuisance, and the conclusion of the ExA that this has limited weight against the Order being made [ER 5.13.258]. The Secretary of State agrees with this conclusion.

Socioeconomics

- 4.160. NPS EN-1 requires that where a project is likely to have socioeconomic impacts, the applicant is to undertake an assessment of those impacts. The applicant or decision maker should also consider whether mitigation measures are necessary to mitigate any potential adverse impacts [ER 5.14.2] [ER 5.14.5].
- 4.161. The ExA noted that a moderate significant beneficial effect was identified in respect of the economy for both North Wales and Wales, and cumulative effect of construction on North Wales economy during the operation phase, which is significant in EIA terms [ER 5.14.183]. The ExA considered these benefits could be supplemented by the final Skills and Employment Strategy, which could provide positive and useful training to local people and companies [ER 5.14.184]. Minor beneficial effects on employment and the economy were also identified as part of the assessment [ER 5.14.22] [ER 5.14.23].

Wake Effect Loss and Energy Yield

- 4.162. The ExA acknowledged the disagreement between Rhyl Flats Wind Farm (RWF) and the Applicant in their interpretation of NPS EN-3³, in relation to the potential wake loss effects from the Proposed Development [ER 5.14.41]. In RWF's view, the Proposed Development would risk reducing the wind energy reaching the existing turbines by 2% of their energy generation [ER 5.14.42].
- 4.163. NPS EN-3 states that where a potential offshore wind farm is proposed close to existing operational offshore infrastructure or has the potential to affect activities for which a licence has been issued by Government, the applicant should undertake an assessment of the potential effect of the Proposed Development on such existing or permitted infrastructure or activities [ER 5.14.44].
- 4.164. RWF considered that the Applicant failed to comply with NPS EN-3 [ER 5.14.45], whilst the Applicant contended that there was no reference in NPS EN-3 to the interaction between offshore wind farms, but rather interactions with other types of offshore infrastructure (e.g., telecommunication cables) or activities (e.g., drilling) [ER 5.14.50]. Additionally, appropriate distances between projects were managed by The Crown Estate (TCE) through its leasing process, which the Applicant considered in the ES's site selection chapter [ER 5.14.51]. The Applicant fundamentally disagreed with RWF's interpretation of NPS EN-3 in respect of wake loss effects [ER 5.14.52].
- 4.165. The ExA accepted that the Applicant complied with the TCE's siting criteria but concluded that NPS EN-3 does apply to offshore wind farm effects on other windfarms and that RWF falls within the definition of existing operational infrastructure. The ExA reasoned that had NPS EN-3 intended to exclude existing wind farms this would have been made explicit [ER 5.14.75] [ER 5.14.78].
- 4.166. The ExA noted that the Applicant had calculated the predicted 2% wake loss using a maximum design scenario and therefore the losses may be lower, and as such, was satisfied with the 2% figure presented [ER 5.14.79]. RWF's estimated calculation was on the basis that both wind farms would operate together for a period of 5 years, which equated to a potential loss of up to 26,000 megawatt hours (mWh) as a result of the Proposed Development [ER 5.14.68]. When measured against Awel y Môr's energy benefits, the 2% wake loss in the ExA's view provided moderate weight against the scheme [ER 5.14.80]. The ExA also agreed with RWF's view that a wake effect assessment should be carried out, as drafted in the rDCO, which would ensure any identified effects on RWF are mitigated and minimised [ER 5.14.84] [ER 5.14.86].

Requirement 20: Skills and Employment Strategy

- 4.167. IoACC noted the dDCO requirements did not include a requirement for the approval of a skills and employment strategy [ER 5.14.88]. The Applicant later confirmed their willingness to provide this and had prepared an outline Skills and Employment Strategy via R20 of the dDCO [5.14.91]. This was also updated into the Schedule of Mitigation and Monitoring [ER 5.14.95].

³ Paragraph 2.6.179

4.168. However, the ExA stated that as no significant adverse residual effects were identified in respect of employment and skills in the socioeconomic assessment, it did not consider R20 would be required as mitigation [ER 5.14.103], and that R20 risked offending against the tests of needing to relate to planning and necessity as set out in Wales in *'The use of planning conditions for development management'* [ER 5.14.106]. However, the ExA recommended that R20 is retained in the rDCO due to the Applicant's willingness to propose a locally beneficial scheme and its support by planning authorities, but due to the issue of compliance with tests, suggested that the Secretary of State may wish to consider further [ER 5.14.111].

Supply Chain

4.169. The IoACC stated that local companies needed to be made aware of potential supply chain opportunities available from the Proposed Development and pushed for a requirement for an outline Supply Chain Action plan to be approved [ER 5.14.113]. The Applicant had significant concern about this being secured through the DCO, due to the risk of duplicating requirements under the Supply Chain Plan that was already underway [ER 5.14.120]. The ExA agreed and held that as no significant residual effects were reported in respect of employment, it was not necessary for jobs to be secured by the dDCO [ER 5.4.128]. The ExA was satisfied otherwise that the Applicant was working positively with relevant parties to support the labour market and the region's growth strategies [ER 5.14.130].

Community Linguistic Statement

4.170. The Applicant's Community Linguistic Statement (CLS) considered the potential impact and effect of the Proposed Development on the Welsh language and culture, which found it would not result in negative impacts [ER 5.14.134]. However, the Welsh Government considered that the CLS did not provide sufficient consideration to "the linguistic nature and interest within the relevant area" and that more consideration was required to the needs and interests of the Welsh language within the Proposed Development. The Welsh Government requested a full impact assessment to consider impacts on inward migration, local services and mitigation measures to support the language. [ER 5.4.136].

4.171. The Applicant updated the CLS which included a proposed Welsh language policy, aimed at ensuring the language was not treated any less favourably than English and requiring contractors/tenants/and others should gain, as a minimum, Level 1 speaking in Welsh language skills [ER 5.14.142]. The ExA was satisfied the Applicant took relevant measures to demonstrate that the Proposed Development would not have any significant negative effects on the Welsh language [ER 5.14.149].

Port Selection

4.172. The ExA was satisfied with the approach adopted by the Applicant regarding port selection and noted the nature of such projects meant that it would be unlikely to be settled in precise detail by the time of the application for development consent [ER 5.14.153] [5.14.156].

Faenol Bropor Landholding

4.173. The OnSS proposed at Faenol Bropor would result in a permanent loss of land, which led to significant concern from the landowners who expressed that this would cause a devastating impact to their agricultural unit and livestock with 54% of the land to be acquired by the Applicant [ER 5.14.161]. The ExA was satisfied the Applicant had good reason for the required land take but as 54% would be required on a long-term basis, disagreed with the Applicant's view that no significant adverse effects would be experienced by the landowners [ER 5.14.165]. For this reason, the ExA considered a moderate significant adverse effect would be experienced by the landowners. The ExA also considers the Applicant's approach of a compensation code if mitigation is not possible to be appropriate [ER 5.14.166].

Cwbr Fawr Partnership

4.174. In respect of the Cwbyr Fawr Partnership land holding, concern was raised in respect of the removal of land and the time it would take to return to full productivity [ER 5.14.168].

4.175. The landowners considered that the installation of the ECC would have a significant effect on aspects of the business and financial implications and requested direct drilling of the proposed export cable rather than the use of open cut trenching [ER 5.14.170]. The ExA accepts there would be some disruption to the commercial operations during the construction of the ECC. However, the ExA considers such disruption would be short-term and temporary in nature [ER 5.14.177].

4.176. Whilst not secured by the dDCO, the ExA was satisfied the Applicant has committed to further discussions in respect of identifying possible measures to ensure the continued viability of the commercial activities at Cwybr Fawr Partnership during the construction phase [ER 5.14.178]. The ExA considered the Applicant's approach of a compensation code if mitigation is not possible to be appropriate [ER 5.14.180].

The Secretary of State's Conclusions

4.177. The Secretary of State agrees with the ExA that the Applicant has undertaken an appropriate assessment of socioeconomic factors and adequately assessed the effects of the Proposed Development.

4.178. The Secretary of State considers the matter of wake effects and agrees with the ExA's view that a wake effect assessment should be carried out, as drafted in the rDCO, to ensure identified effects on RFWF are mitigated and minimised. As such, the Secretary of State is satisfied to have this included within the DCO.

4.179. The Secretary of State considers that R20 of the DCO states that no stage of the development may commence until such time as a skills and employment strategy has been submitted and approved by DCC, despite the concerns raised by the ExA that such a requirement may not meet the six planning tests (particularly that of necessity). However, as there is precedent for such requirements, local authorities are happy to accept it and the Applicant has offered this, the Secretary of State is prepared to accept the current DCO wording.

4.180. The Secretary of State concurs with the ExA's opinion on both the advantages and disadvantages of the Proposed Development and accords moderate weight in favour of matters relating to socioeconomics for the making of the Order [ER 5.14.187].

Tourism and Recreation

4.181. NPS EN-3 notes that as offshore wind farms occupy an area of the sea it is inevitable there will be some impact on navigation for both recreational and commercial users of the sea who may be affected by disruption, and economic loss must be considered [ER 5.15.9].

4.182. The ES identified negligible to minor adverse effects during the construction phase which were not significant in EIA terms [ER 5.15.20]. The exception was the negative impact on visitor numbers with effects for Llandudno and the Great Orme reported as moderate adverse, though this was stated as being short term (up to 2 years) [ER 5.15.21] [ER 5.15.23].

4.183. In relation to operational activity the ES identified negligible to minor adverse effects to local receptors, and this would only increase to moderate adverse effects if repairs are necessary. The ExA noted this would be very unlikely [ER 5.15.25].

4.184. In respect of decommissioning and mitigation, the assessment assumed that at the end of the operational lifetime of the Proposed Development, all infrastructure would be completely removed. The effects of decommissioning activities were likely to be similar to, but no worse than, the effects identified during the construction phase [ER 5.5.35].

4.185. The ExA noted CCBC's concern regarding baseline characterisation and the evidence used to determine a baseline environment by the Applicant relevant to tourism and recreation as accurately as possible. However, acknowledged that due to the Covid-19 pandemic it was necessary to make several assumptions to identify a baseline [ER 5.15.47]. The ExA was satisfied the Applicant faced exceptional circumstances due to the pandemic and that it clearly identified and explained the limitations with baseline characterisation [ER 5.15.120]

4.186. The ExA accepted that some harm may likely occur to the Great Orme and Llandudno tourism sector at the end of the construction phase and during the early operation phase. However, noting the importance of the tourism economy in this location, such harm would be significantly reduced once the early operational phase is complete and would result in a long-term neutral effect on the tourist economy [ER 5.15.121]. Additionally, the ExA was satisfied that the Applicant undertook the assessment on a precautionary approach, demonstrated by use of the 'worst case' scenario in the Maximum Design Scenario to mitigate uncertainties [ER 5.15.63].

4.187. To aid the potential short-term negative impact on the tourism economy in the Great Orme and Llandudno area, the Applicant and CCBC discussed a tourism fund which would take the form of a commercial agreement as such it falls outside of the Examination and the ExA was unable to attach any weight to it [ER 5.15.126].

The ExA's Conclusions

4.188. The ExA was satisfied the Applicant has appropriately identified the effects of the Proposed Development on tourism and recreation, it would accord with the relevant policy requirements, and that the mitigations for the adverse impacts on tourism would be adequately secured through the dDCO [ER 5.5.123]. The ExA attributed limited weight against making of the Order to matters relating to this topic [ER 5.15.131]. The Secretary of State agrees.

Traffic and Transport

4.189. The Applicant's ES evaluated the Proposed Development's effects on traffic and transport from construction, operation (including maintenance) and decommissioning [ER 5.16.2].

4.190. NPS EN-1 states that the transport of materials and goods to and from a development can cause a range of impacts on the surrounding transport infrastructure during all project phases, the decision-maker should ensure the applicant has sought to mitigate the impacts, and that if a project is likely to have significant transport impacts the applicant's ES should include a Transport Assessment [ER 5.16.4] [5.16.5]

4.191. NPS EN-3 states that the extent to which generic impacts set out in NPS EN-1 are relevant, may depend on the phase of the proposed development being considered [ER 5.16.7].

4.192. The Applicant's assessment of potential traffic and transport effects during construction concluded that all identified issues, measured against relevant mitigations, held "*not significant*" residual effects⁴. The decommissioning activities were not considered to exceed the construction phase worst case criteria assessed [ER 5.16.32] and there would be no transboundary or cumulative effects from the Proposed Development [ER 5.16.36] [ER 5.16.39].

4.193. Of the 60 RRs received, 12 referred to traffic and transport during construction and operation [ER 5.16.41].

Use of the Glascoed Road for Construction Traffic

4.194. Genesis Town Planning questioned the suitability of Glascoed Road, B5381 for construction traffic accessing the OnSS site and suggested an alternative route [ER 5.16.34]. In response to the ExA questioning the Applicant's choice of route, the Applicant outlined the process by which the four potential routes were assessed [ER 5.16.57]. The ExA concluded that the Applicant's assessment had addressed the issue and provided a suitable route to the site of the OnSS [ER 5.16.62].

Maintenance Access Route Adjacent to Denbighshire Crematorium and Memorial Park

4.195. In response to a concern raised by Genesis Town Planning about the proposed location of a maintenance access road adjacent to the crematorium causing potential noise and disturbance, the Applicant explained the route would only be used 1-2

⁴ Table 12, page 327

times a year which the ExA held would therefore cause no significant adverse effects [ER 5.16.63] [ER 5.16.64] [ER 5.16.65].

Construction Traffic Causing Congestion on the A525

4.196. The ExA noted that the Applicant responded to RRs concerning construction traffic, and that no further responses or representations were made on the issue or the assessment [ER 5.16.67]. The ExA was satisfied the Applicant's assessment demonstrated that any adverse impact would be minor, and any resulting effect would not be significant [ER 5.16.68].

Additional Traffic using Dyserth Road

4.197. The ExA noted that the Applicant responded to RRs concerning traffic and potential days, and that no further responses or representations were made on the issue or to their assessment [ER 5.16.71]. The ExA was satisfied that the Applicant's assessment demonstrated that any adverse impact would be minor, and any resulting effect would not be significant [ER 5.16.72].

Street Works and Stopping up of Public Rights of Way Powers

4.198. Though DCC were originally not content with the street works and public rights of way powers to be exercised by the Applicant, the ExA noted later discussions between the Applicant and DCC and that the final Statement of Common Ground (SoCG) showed the latter had agreed all issues with respect to traffic and transport [ER 6.16.74]. The ExA was satisfied with this position [ER 5.16.75].

Port for Construction Traffic

4.199. Despite the Applicant not confirming a port for the delivery of sub-station transformers and other large components or for offshore works, the ExA noted the Abnormal Load Assessment Report as part of the Construction Traffic Management Plan (CTMP), which would be prepared post-consent, would confirm the identified port. The ExA was satisfied that any adverse effects following the selection of the port can be mitigated effectively by measures in the final CTMP [ER 5.16.78].

The ExA's Conclusions

4.200. The ExA was satisfied that the Applicant had fully assessed the traffic and transport impacts associated with all phases of the Proposed Development, in accordance with the relevant policy requirements and with appropriate mitigation measures [ER 5.16.81]. The ExA ascribed limited weight against the Order being made [ER 5.16.83].

4.201. The Secretary of State considers that the Applicant has adequately assessed the potential impacts and concludes that traffic and transport matters do not weigh against the Order being made.

Post-Examination Environmental Information

4.202. On 11 July 2023, the Applicant provided an updated assessment of the in-combination effects which included updated environmental information for the

Morgan, Mona, and Morecambe offshore wind farm projects⁵. The post-examination submission concluded that with regards to the following topics there was no significant effect for the Project in-combination with other plans or projects and the conclusions of the original ES remain valid:

- Marine geology, oceanography and physical processes
- Marine water and sediment quality
- Offshore ornithology
- Benthic subtidal and intertidal ecology
- Fish and shellfish ecology
- Commercial fisheries
- Shipping and navigation
- Offshore archaeology
- Other marine users and activities
- Military and civil aviation
- Socio-economics
- Tourism and recreation
- Biodiversity and nature conservation
- Ground conditions and land use
- Hydrology, hydrogeology and flood risk
- Onshore archaeology and cultural heritage
- Traffic and transport
- Noise and vibration
- Air quality; and
- Public health

4.203. In accordance with the conclusion of the original ES, the Applicant concluded that there would be cumulative significant effect for the following topics:

- Seascape, landscape and visual impact assessment; and
- Landscape and visual impact assessment

4.204. With regards to marine mammals, the Applicant's updated assessment stated that it is not possible to rule out the potential for significant cumulative effects on bottlenose dolphin, harbour porpoise or harbour seal. However, based upon the commitments by Mona, Morgan, and Morecambe to provide further assessment of these effects at the ES stage (including consideration of further mitigation), it is expected that measures will be secured to ensure that significant in combination/cumulative effects do not arise. On this basis, the Applicant stated that its conclusion of no significant effect on marine mammals remained unchanged.

Consultee Responses

4.205. The Joint Nature Conservation Committee (JNCC) submitted a consultation response (dated 30 August 2023) in relation to the Review of Cumulative and In-Combination Effects Post-Examination Submission (dated 11 July 2023).

⁵<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010112/EN010112-001779-Combined%20Post%20Examination%20Submissions.pdf>

- 4.206. With regard to the Liverpool Bay SPA, the JNCC noted that greater clarity is needed as to how the conclusions on the in-combination effects, specifically in relation to offshore ornithology, were reached. The JNCC also noted that the in-combination assessment for the Morecambe OWF was based upon 12 months of survey data, insufficient for the JNCC to provide further advice on potential in-combination effects to Liverpool Bay SPA at this time.
- 4.207. With regard to the North Anglesey Marine SAC, the JNCC agreed that cumulative impacts upon marine mammals from Mona, Morgan or Morecambe OWFs are possible due to the overlapping construction timetables. Underwater noise and vessel activity are the most likely cumulative impacts. As such, the JNCC advised that it was not possible to rule out the potential for significant cumulative effects in relation to Conservation Objective 2, no disturbance to harbour porpoise. It was acknowledged that a noise management approach is in place to manage disturbance and that Mona, Morgan, and Morgan OWFs have committed to undertaking further assessments of impacts in their respective applications. However, the JNCC noted that to ensure no in-combination AEoI on the North Anglesey Marine SAC occurs, mitigation and management measures must be secured as conditions of the relevant consents. Furthermore, the JNCC considered that the need for a Site Integrity Plan (SIP) for the potential in-combination effects on marine mammals should be reviewed.
- 4.208. The Department of Agriculture, Environment and Rural Affairs (DAERA) of Northern Ireland submitted a consultation response (dated 31 August 2023) in relation to the Review of Cumulative and In-Combination Effects Post-Examination Submission (dated 11 July 2023). DAERA noted concern for the impact on Harbour Seals in the Strangford Lough SAC and Harbour Porpoises in The North Channel SAC, whilst welcoming further consideration of impacts on these features in the future. DAERA also noted the potential risk of introducing/spreading marine invasive non-native species. As such, DAERA recommended that biosecurity/mitigation measures be established.
- 4.209. Natural Resources Wales (NRW) submitted a consultation response (dated 29 August 2023) in relation to the Review of Cumulative and In-Combination Effects Post-Examination Submission (dated 11 July 2023).
- 4.210. NRW noted that it was a reasonable approach to expect further consideration of potential cumulative effects will be given by Mona, Morgan, and Morecambe OWFs at the ES stage, incorporating any project refinement and further mitigation or enhancement that may be necessary. NRW advised that they are in ongoing and continued discussions with the Applicants of the Mona, Morgan and Morecambe OWFs to refine their development proposal applications ahead of formal submissions to the Planning Inspectorate. Furthermore, NRW noted that it was their view that the Mona, Morgan and Morecambe OWFs should fully consider the cumulative effects of Awel y Môr as part of their examinations.
- 4.211. With regard to marine mammals, NRW agreed that it was not possible to rule out additional cumulative likely significant effects. However, NRW were satisfied that, subject to the delivery of the mitigation measures, an adverse effect on the integrity of the marine mammal SACs from Awel y Môr in-combination with other projects could be excluded. The Secretary of State agrees with the conclusions of the ExA

and NRW, and notes that the mitigation measures would be most appropriately dealt with during the ML process. As such, the Secretary of State recommends that NRW consider the implementation of these by the Applicant through the marine licence process.

- 4.212. On the matter of fish and shellfish ecology, NRW disagreed with the conclusion of the updated cumulative effects assessment that there will be no additional cumulative likely significant effects and that all effects remain minor. NRW advised that there would be likely impacts from underwater noise on fish receptors either alone or in combination with other planned projects in Liverpool Bay. As such, NRW could not rule out significant effects from Mona and Morgan OWFs alone or cumulatively. NRW advised that the assessments for the Mona, Morgan and Morecambe OWFs applications should consider cumulative effects with Awel y Môr on fish and shellfish ecology as part of their forthcoming examinations.
- 4.213. With regard to designated landscapes, NRW considered there to have been an underestimation of some seascape, landscape, and visual effects. NRW agree that potential significant cumulative effects are likely with the Mona OWF project on receptors within the Isle of Anglesey AONB. However, NRW noted that there would also be potential significant effects on Eryri National Park receptors and on seascapes. NRW agreed that potential significant cumulative effects likely will not arise with the Morgan and Morecambe OWFs projects given their distance from the designated landscapes. Furthermore, NRW noted the potential for the Mona landfall and cable corridor to have potential significant effects due to its size and closer proximity to the Clwydian Range and Dee Valley AONB than the Awel y Môr substation. The cumulative effect of both substations has the potential to be significant. NRW advised that adverse effects should be minimised, and the materials and colours of the proposed buildings and infrastructure should be designed to minimise visual impacts.
- 4.214. The Secretary of State acknowledges receipt of the Applicant's late submission on 8 September 2023 in response to the Secretary of State's consultation letter. In accordance with Rule 10, Rule 17 and Rule 19 of The Infrastructure Planning (Examining Procedure) Rules 2010, the Secretary of State notes that it is reasonable to '*disregard any written representations, responses to questions or further information received after the date, or the expiry of the period, specified for their receipt.*' Having considered the content of the representation, the Secretary of State is content that the update makes no difference to the overall conclusions.
- 4.215. With these matters considered, the Secretary is satisfied that the concerns do not change the conclusions of the original ES.

Other Considerations

Policy Considerations

- 4.216. NPS EN-1 highlights the role of government policy on hazardous and non-hazardous waste in protecting human health and the environment by producing less waste and using it as a resource where possible, sets out a waste hierarchy approach to manage waste, and states the applicant should set out the arrangements proposed in a Site Waste Management Plan [ER 5.17.2] [ER 5.17.3] [ER 5.17.4].

The Proposed Application

- 4.217. The ExA noted that the Applicant did not submit a specific waste and materials resources chapter as part of their ES, however an outline Code of Construction Practice was submitted, which focused on waste matters, with further detail in the outline Site Waste Management Plan (oSWMP) and both secured by Requirement (R)10 of the dDCO [ER 5.17.7] [ER 5.17.8].
- 4.218. The Applicant confirmed that waste management policies would be secured through the ML, in respect of the offshore environment, which would be agreed by Natural Resource Wales (NRW) prior to any offshore works.
- 4.219. The ExA sought clarity as to the capacity of the Proposed Development to receive both conventional and hazardous waste generated from it. Following further information, the ExA concluded that the Applicant demonstrated that sufficient available capacity exists in North Wales to manage waste from the Proposed Development [ER 5.17.18].
- 4.220. The ExA asked NRW to confirm whether it was content with the oSWMP. In response, NRW confirmed it agreed with the proposed approach as outlined in the oSWMP and was satisfied onshore waste would be appropriately managed [ER 5.17.21].
- 4.221. The ExA concluded that matters relating to mitigation in respect of waste and materials management would be adequately provided for and are appropriately secured through the dDCO. The Proposed Development would meet all legislative and policy requirements relating to waste management.
- 4.222. The Secretary of State agrees with the ExA and is satisfied there are no matters relating to waste and material management which weigh for or against an Order being made.

5. Habitats Regulation Assessment

- 5.1. This section provides a summary of the Habitats Regulation Assessment (HRA) conclusions. Please refer to the Awel y Môr HRA report for further details of this assessment.
- 5.2. In the UK, the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 transposed the Habitats and Birds Directives into national law as far as the 12nm limit of territorial waters. Beyond territorial waters, the Conservation of Offshore Marine Habitats and Species Regulations 2017 serve the same function for the UK's offshore marine area. In this letter both sets of regulations are referred to collectively as the 'Habitats Regulations'. The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.
- 5.3. Following the UK's departure from the European Union, these domestic regulations continue to apply. The Secretary of State notes the Application covers areas within and outside the 12nm limit, so both sets of Habitats Regulations apply.

- 5.4. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (SACs). The Regulations also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (SPAs). SACs and SPAs together form part of the UK's National Site Network.
- 5.5. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the National Site Network (collectively referred to here as "protected sites").
- 5.6. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 provides that: *"...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."*
- 5.7. And that: *"In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*
- 5.8. Regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 contains similar provisions: *"Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site's conservation objectives."*
- 5.9. And that: *"In the light of the conclusions of the assessment, and subject to regulation 29 (considerations of overriding public interest), the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be)."*
- 5.10. The Habitats Regulations require that, where the project is likely to have a significant effect (LSE) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (AA) is carried out to determine whether the project will have an adverse effect on the integrity (AEoI) of the site in view of that site's conservation objectives. Where an adverse effect on the integrity of the site cannot be ruled out, the derogation tests are invoked.
- 5.11. The Secretary of State's HRA is published alongside this letter. The following paragraphs, which provide conclusions, must be read alongside the HRA which is the full statement of the Secretary of State's consideration of these matters.

- 5.12. The Secretary of State has carefully considered the information presented before and during the Examination, including the Report to Inform the Appropriate Assessment (RIAS), the Environmental Statement, representations made by Interested Parties, consultation responses and the ExA's Report itself. She has also considered further environmental information submitted post-Examination and the consultation responses to this information. She considers that the Proposed Development has the potential to have an LSE on 36 National Site Network sites when considered alone and in-combination with other plans or projects.
- 5.13. With regards to North Anglesey Marine SAC, the Secretary of State notes that JNCC advised that it was not possible to rule out the potential for significant cumulative effects with regard Conservation Objective 2, which requires no disturbance to harbour porpoise. To ensure that no in-combination AEoI of this SAC occur, JNCC state that mitigation and management measures must be secured as conditions of the relevant consents. Furthermore, the need for a Site Integrity Plan (SIP) for the in-combination effects on marine mammals should be reviewed.
- 5.14. The Secretary of State also notes DAERA's concerns regarding the harbour porpoise feature of The North Channel SAC, and the potential risk of introducing/spreading marine invasive non-native species. DAERA recommended that biosecurity/ mitigation measures be established.
- 5.15. The Secretary of State takes comfort from NRW's statement that they were in discussions with the Applicants of the Mona, Morgan and Morecambe OWFs to refine their development proposals and it was NRW's view that these projects should fully consider the cumulative effects with Awel y Môr as part of their assessments; and that NRW were satisfied that, subject to the delivery of the mitigation measures, an adverse effect on the integrity of the marine mammal SACs from the Project in-combination with other projects could be excluded.
- 5.16. With regards to the red-throated diver feature of Liverpool Bay SPA. The Secretary of State notes JNCC's concerns around the lack of clarity on how the in-combination conclusions were reached; and that the information provided for the in-combination assessment with the Morecambe OWF project was based on insufficient survey data. However, the Secretary of State also notes NRW's opinion that with regards to the inclusion of the Mona, Morgan and Morecambe OWF projects in the in-combination assessment, they agreed with the Applicant's conclusion of no LSE, stating that it will be for those projects to consider the in-combination effects with Awel y Môr as part of their assessments. The Secretary of State also notes that that the in-combination assessment was based on preliminary design information and that future projects will be required to undertake further assessments and provide mitigation measures to ensure there is no AEoI when they submit their DCO applications.
- 5.17. The Secretary of State has undertaken an AA in respect of the conservation objectives of protected sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEoI of any protected sites for which there are LSEs. The Secretary of State has considered the available information, including the mitigation measures secured through the Order and the requirement for future projects to mitigate their effects, and has concluded that an AEoI of any protected site can be excluded.

6. Compulsory Acquisition

6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of Compulsory Acquisition and Temporary Possession of land relating to the proposed onshore works. The Applicant is seeking these powers to:

- acquire land permanently within the Order limits;
- temporarily possess land within the Order limits;
- acquire existing rights and restrictive covenants over some of the land within the Order limits;
- extinguish existing rights and restrictive covenants over some of the land within the Order limits;
- create new rights and restrictive covenants over some of the land within the Order limits; and
- temporarily suspend existing rights and restrictive covenants over some of the land within the Order limits;

in order to construct, operate and maintain the Proposed Development or to facilitate it, or for purposes incidental to it [ER 11.1.1].

6.2. The Applicant is seeking powers for the CA of land and rights over land required or used permanently for the construction, operation and maintenance of the Proposed Development [ER 11.4.2]. The ExA noted the Applicant's Land Plans which identified the following land interests – permanent CA of land; CA of rights and TP of land; and TP of land only. Of these, the Applicant is seeking powers of 499 plots of land [ER 11.5.16]. The CA of Crown land was also sought by the Applicant, as well as the CA of rights and TP of land which fall into the 'special category land' [ER 11.4.11] [ER 11.4.12].

6.3. During the course of the Examination, the Applicant removed Plots 26 and 69a from the Order land as they were no longer required [ER 11.3.8].

6.4. The ExA notes that CA powers can only be granted if the conditions set out in s122 and s123 of the 2008 Act, together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the former Department for Communities and Local Government) (DCLG CA Guidance) are met [ER 11.2.2].

6.5. Section 122(2) of the 2008 Act states that CA may only be authorised if:

- the land subject to CA must be required for the development to which the development consent relates; or
- must be required to facilitate or be incidental to the development;
- it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the 2008 Act; and
- there is a compelling case in the public interest.

6.6. In respect of land required for the development, the DCLG CA Guidance sets out that:

- the land required to be taken must be no more than is reasonably required and be proportionate;
- there must be a need for the project to be carried out;
- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
- they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.

6.7. Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest to acquire the land compulsorily. The DCLG CA Guidance states at paragraphs 12 and 13 that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired. In balancing public interest against private loss, CA must be justified in its own right [ER 11.2.4]. s123 of the 2008 Act requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:

- 2) The application for the order included a request for compulsory acquisition of the land to be authorised;
- 3) All persons with an interest in the land consent to the inclusion of the provision;
- 4) The prescribed procedure has been followed in relation to the land

6.8. A number of general considerations must also be addressed by the Applicant, either as a result of following the guidance or in accordance legal duties on decision makers:

- all reasonable alternatives to CA (including modifications to the development) have been explored;
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
- the Applicant has a clear idea of how the land which it is proposing to acquire will be used;
- there is a reasonable prospect of the requisite funds becoming available; and
- the purposes for which the CA of land are included in the application are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected [ER 11.2.5].

6.9. Of the 60 Relevant Representations (RRs) received by the ExA, 23 were from parties affected or potentially affected by CA or TP (Affected Persons or APs) including Statutory Undertakers (SU) [ER 11.5.2]. Written submissions were also made by 6 other APs [ER 11.5.3].

6.10. The ExA was satisfied that with the Applicant's legal interests in all plots of land included in the Book of Reference (BoR) and Land Plans would be required for the Proposed Development with respect to both CA and TP powers. The ExA was satisfied that in respect of land subject to CA for the Proposed Development, the land to be taken is no more than is reasonably required and the proposed land-take is proportionate [ER 11.6.1].

- 6.11. The ExA considered whether the public benefit in delivering the Proposed Development would outweigh the private loss and having considered individual cases, was satisfied that this would be the case [ER 11.6.2].
- 6.12. In respect of S127 of the 2008 Act, which applies to land acquired by a SU the ExA held that the provision did not apply to the application and was satisfied that the powers sought by the Applicant in relation to SUs are necessary for the Proposed Development, as per s138 of the 2008 Act [ER 11.6.4] [ER 11.6.5].
- 6.13. Regarding special category land, the ExA was the relevant Order land, when burdened with the Order right, would be no less advantageous than it was before to all relevant persons and the public in accordance with s132(3) of the 2008 Act and accordingly, would not be subject to special parliamentary procedure [ER 11.6.6].
- 6.14. In relation to human rights, the ExA was satisfied that the Examination ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development was proportionate and struck a fair balance between the rights of the individual and the public interest and that compensation would be available in respect of any quantifiable loss [ER 11.6.7].
- 6.15. The ExA stated that the case for CA powers needs to be based on the case for the Proposed Development overall and affirmed that the development consent should be granted. The ExA was satisfied that the CA powers sought by the Applicant were justified and should be granted because as there is a compelling case in the public interest for land and relevant interests where appropriate to be compulsorily acquired, and that the public benefit of enabling the Proposed Development to go ahead would outweigh the private losses to individuals concerned [ER 11.6.8].
- 6.16. However, the ExA addressed the fact that Crown consent had not been received specifically at that time and with the absence of such consent, that the ExA could not authorise the CA or TP of those plots of land [ER 11.6.9]. The Secretary of State notes that Crown Land is subject to special provisions and under the 2008 Act the interests in Crown Land cannot be compulsorily acquired but third-party interests can be.
- 6.17. In a letter submitted by the Crown Estate to the Planning Inspectorate on the 20 June 2023, TCE Commissioners confirmed they reached an agreement with the Applicant providing TCE with sufficient assurance as to the way in which compulsory acquisition powers will be exercised in respect of third-party interests in Crown Land forming part of the Crown Estate. As such, TCE confirmed their consent to the compulsory acquisition of the third-party interests in the Plots 6, 11, 12, 28, 29, 31, 32, 35, 48, 53, 55, 56, 58, 61, 255, 257, 258 and 259 for the purpose of section 135(1) of the 2008 Act. TCE Commissioners consent is conditional being consulted further if any variation to the dDCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the 2008 Act.
- 6.18. In a letter submitted to the Secretary of State on 18 July 2023, the Applicant updated and confirmed that a transmission assets agreement for lease had been agreed with TCE for the transmission of assets, which was finalised on 12 July 2023. As such, the Secretary of State considers that the CA of Crown Land has been consented for.

- 6.19. In a consultation response letter submitted by the Applicant to the Secretary of State on 29 August 2023, in response to a request from the Secretary of State seeking further information on various points, updates were provided on matters relating to CA. The Applicant confirmed that with regards to Mr JB and Mrs E Evans, engagements have continued for both freehold acquisition and permanent rights and would consider the Heads of Terms to be at an advanced stage of negotiation pending final agreement. The Secretary is satisfied with this progress and has no material concerns with the completion of a voluntary agreement.
- 6.20. Additionally, the Applicant updated on their engagement with Wilson Fearnall o.b.o GBL and IM Kerfoot, concerning in their view, the Applicant's failure to fully consider suitable alternative proposals and various other concerns. The Applicant confirmed it is anticipated that a meeting would be held in September to engage on the topic, with a view to concluding a voluntary agreement. The Secretary is satisfied with this progress and has no material concerns with the completion of a voluntary agreement.
- 6.21. Lastly, the Applicant also provided an update concerning an inconsistency highlighted by the ExA in the Report between the BoR and Crown Land Plan, where the latter identifies 'The King's Most Excellent Majesty In Right Of His Crown' (i.e. TCE) as having interest in the land within the legends on Sheets 4 and 5, whereas the BoR identifies the Secretary of State for Wales, the Welsh Ministers or the Welsh Government as the relevant land interest [ER 11.5.205]. The Applicant confirmed that The Crown Land Plan has been updated to clarify that the plots on Sheets 4 and 5 are plots owned by the Welsh Ministers. The Secretary is satisfied with this update and considers this matter resolved.
- 6.22. The DCO currently allows for a 7-year time limit for commencement, as per [ER 12.4.60] of the Report. The ExA considers this need by the Applicant as evidenced, and as such retained within the rDCO [ER 12.4.62].

The Secretary of State's Conclusions

- 6.23. The Secretary of State agrees with the ExA's conclusions and considers that conditions 122(2) and (3) and 123(2) and (3) of the 2008 Act have been met and that there is a compelling case in the public interest to grant compulsory acquisition and temporary possession powers to facilitate the Proposed Development. As such, the Secretary of State considers that this matter does not weigh against the Order being made.
- 6.24. The Secretary notes the ExA's position on time limits for land acquisition but considers that standard 5-year approach would be sufficient in the Applicant's case, which would still enable the Applicant to apply for an extension if required, subject to the appropriate justification. The DCO has been amended accordingly.
- 6.25. The Secretary of State has no reason to believe that the grant of the Order would give rise to any disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 6.26. The Secretary of State considers the update and consultation response provided by the Applicant post-Examination as sufficient in resolving the several outstanding queries relating to voluntary agreements and Crown Land consent.

7. Secretary of State's Consideration of the Planning Balance

- 7.1. Where NPSs have effect, section 104 of the 2008 Act requires the Secretary of State to have regard to a range of policy considerations including the relevant NPSs, Development Plans and LIRs prepared by local planning authorities in reaching a decision.
- 7.2. The Secretary of State agrees with the ExA's conclusions on planning weight for the following issues:
- Aviation (neutral);
 - Flood Risk and Water Quality (neutral);
 - Marine and Coastal Physical Processes (neutral);
 - Marine – Commercial Fisheries, Shipping and Navigation (neutral);
 - Marine Water and Sediment Quality (neutral); and
 - Other Considerations (neutral);
- 7.3. The ExA concluded that socioeconomic considerations weigh positively in the planning balance. The Secretary of State has carefully considered the issue and accorded socioeconomic considerations moderate positive weight.
- 7.4. The ExA considered the harms caused to heritage assets, and landscape and visual matters and ascribed them both moderate weight against the Order. The ExA also considered the harmful effects to seascape, landscape and visual effects and viewed the weighting as being within the boundaries of substantial harm. The Secretary of State agrees with these conclusions.
- 7.5. All NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached NPS EN-1, NPS EN-3, NPS EN-5 or those contained in the emerging draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.
- 7.6. The Secretary of State has considered all the merits and disbenefits of the Proposed Development, and concluded that, on balance, the benefits of the Proposed Development outweigh its negative impacts, in particular, the contribution of renewable electricity to the urgent need to decarbonise the electricity supply.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "*general equality duty*" (PSED). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following protected characteristics: age; gender; gender

reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race.

- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Section 6(1) of the Environment (Wales) Act 2016

- 8.5. The Secretary of State, in accordance with the duty in section 6(1) of the Environment (Wales) Act 2016, must seek to maintain and enhance biodiversity in, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. In particular, in accordance with section 6(4)(a), regard should be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State is of the view that the ExA's Report considers biodiversity in accordance with this duty.
- 8.6. The Secretary of State is of the view that the ExA's Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

9. Secretary of State's Conclusions and Decision

- 9.1. For the reasons given in this letter, the Secretary of State considers that the benefits of the Proposed Development outweigh its adverse impacts and that the matters relating to Habitat Regulations have been satisfied. Consequently, the Secretary of State considers that development consent should be granted for the Awel y Môr Offshore Wind Farm. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.
- 9.2. The Secretary of State has therefore decided to accept the ExA's recommendation to consent. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the LIRs, the NPSs, draft NPSs, and to all other

matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

10. Modifications to the draft Order

10.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:

- a. Amendments to the definitions in Article 2(1) (Interpretation):
 - i. Inclusion of definitions for "authorised project", "Defence Infrastructure Organisation Safeguarding", "highway", "horizontal directional drilling", "landfall", "meteorological mast", "offshore electrical platform", "owner", "scour protection" and "watercourse" and omission of definition of "Tribunal".
 - ii. Amendment to the definition of "land plans" to specify that it means documents certified as the land plan (offshore) and land plan (onshore).
 - iii. Amendment to the definition of "Order limits" to specify that the limits correlate to the grid coordinates seaward of MHWS as set out at Table 1 in Part 1 of Schedule 1 (authorised development) of this Order.
- b. Amendments to Part 2 (Principal Powers)
 - i. Amendments to Article (3) to clarify that no provision of this Order relieves the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act.
 - ii. Amendments to Article 6(2)(b) to qualify that Article 6(2)b applies except where notice in accordance with Part 2, s6(8) is given, in which case the consent of the Secretary of State is not required.
 - iii. Amendment to Article 6(3) to Article 6(6) and addition of Article 6(7) to 6(10) to specify notice requirements. This is consistent with the position taken in previous Development Consent Orders.
- c. Amendments to Part 4 (Supplemental Powers)
 - i. Inclusion of "drain" to Article 14(2).
 - ii. Amendment to Article 17(12) to reflect wording of section 25 Burial Act 1857 that the removal of a body from burial grounds is an offence.
- d. Amendments to Part 5 (Powers of Acquisition)
 - i. Amendment to Article 19 (Time limit for exercise of authority to acquire land compulsorily) to change the time limit for the exercise of authority to acquire the land compulsorily to 5 years instead of 7 years, and subsequent amendments to Article 23 and 25 and Paragraph 1 of Schedule 2. The Secretary notes the

ExA's position on time limits for land acquisition but considers that standard 5-year approach would be sufficient in the Applicant's case, which would still enable the Applicant to apply for an extension if required, subject to the appropriate justification.

- ii. Amendment to Article 20(1) to denote that it is subject to Article 20(2).
- iii. Addition of "expiry of time limit for exercise of compulsory purchase power not to affect acquisition of" in Article 25(4).
- iv. Amendment to Article 30(3) with public utility undertaker defined as "a gas, water, electricity or sewerage undertaker".
- v. Article 33(1) qualified as being subject to paragraph (2) and Article 34 (trees subject to tree preservation orders).
- vi. Article 33(4) amended to limit hedgerows to those within Order limits and those specified in Schedule 10.

Schedule 2 (Requirements)

- e. Amendment to Requirement 4 (offshore noise) to remove the words 'or with the prior written approval of the Secretary of State in consultation with the relevant planning authority'. It is considered that asking the Secretary of State for approval in these circumstances is unusual and if the Applicant wanted the level of offshore noise to be increase on a permanent basis, then a non-material change application could be made.
- f. Amendment to Requirement 7(2)(b)(i) (Detailed design parameters onshore) to clarify that the building being referred to is the "main gas switchgear substation".
- g. Amendment to Requirement 10 (Code of construction practice) to clarify that approval is with relevant planning authority in consultation with the highway authority as appropriate.
- h. Renumbering of Requirements 23 and 24 to Requirements 26 and 27 respectively, and amendment to the re-numbered Requirement 27 (amendments to approved details) to clarify that amendments can only be approved by the person who would give consent to discharge of the requirements. This is consistent with the position taken in previous Development Consent Orders.

Schedule 9 (Protective Provisions)

- i. Amendments to Schedule 9 (protective provisions) in following Parts:
 - i. Paragraph 33, Part 3 (for the protection of the National Grid) to clarify that the plan that must be submitted is "of the works to be executed".
 - ii. Paragraph 72(a), Part 6 (for the protection of Network Rail infrastructure Limited) to clarify that it is the undertaker who must "indemnify Network Rail and

keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission”.

- iii. Paragraph 103 of Part 9 (for the protection of Wales and West Utilities), to specify that it is the agreement of “Wales and West Utilities” from whom the undertaker must seek agreement.
- iv. Amendments made to Part 11 (for the Protection of North Hoyle Wind Farm Limited) these are:
 - Amendment of “proposed timetable for the work” in Paragraph 141 (Interpretations).
 - Amendment of “specified works” in Paragraph 141 (Interpretation).
 - Amendment to the definition of “undertaker cables” in Paragraph 141 (Interpretation) for consistency with Work No.2 wording.
 - Amendment of Paragraph 152(1)a to clarify that this should only apply to 250m radius of crossing points.
 - Inclusion of provisions in Paragraph 157 in relation to future works in the vicinity of the undertaker's cables.
 - Amendment to Paragraph 166 to change currency to euros because the undertaker would insure through the European insurance market.
 - Inclusion of an arbitration clause in Paragraph 169 to confirm the dispute resolution process in the event of a dispute.

Schedule 12 (Arbitration Rules)

- j. Amendment requiring that, subject to Paragraph 7(2) and (3), arbitration hearings and documentation shall be open and accessible by the public.

10.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency. The Order, including the modifications referred to above is being published with this letter.

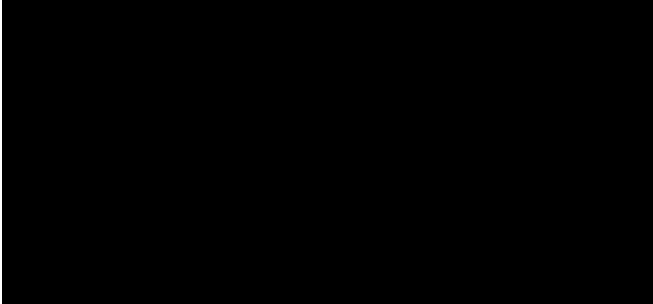
11. Publicity for Decision

11.1. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the 2008 Act provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by

section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE
Deputy Director, Energy Infrastructure Planning
Department for Energy Security and Net Zero

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent or a decision to refuse development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/wales/awel-y-mor-offshore-wind-farm/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effect on Integrity
AIS	Air Insulated Substation/Switchgear (page
ALC	Agricultural Land Classification
AONB	Area of Outstanding Natural Beauty
BMVAL	Best and Most Versatile Agricultural Land
BoR	Book of Reference
CA	Compulsory Acquisition
CCBC	Conwy County Borough Council
CEA	Cumulative Effects Assessment
CLS	Community Linguistic Statement
CoS	Chamber of Shipping
CRDV	Clwydian Range and Dee Valley
CTMP	Construction Traffic Management Plan
DCC	Denbighshire County Council
DCO	Development Consent Order
dDCO	Draft Development Consent Order
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ENP	Eryri National Park
ENPA	Eryri National Park Authority
ES	Environmental Statement
ExA	Examining Authority
FLCEP	Fisheries Liaison and Co-existence Plan
FRAP	Flood Risk Activity Permit
GCN	Great Crested Newts
GOHC	Great Orme Heritage Coast
HPAI	Highly Pathogenic Aviation Influenza
HRA	Habitats Regulations Assessment
INNS	Invasive Non-Native Species
IoA	Institute of Acoustics
IoACC	Isle of Anglesey County Council
IP	Interested Parties
LCA	Landscape Character Area
LEMP	Landscape and Ecology Management Plan
LIR	Local Impact Report
LSE	Likely Significant Effects
LVI	Landscape and Visual Impact Assessment
MCA	Maritime and Coastguard Agency
MWH	Megawatts

NATS	National Air Traffic Services
NRA	Navigational Risk Assessment
NRW	Natural Resource Wales
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NWLPA	North Wales Local Planning Authorities
oCMS	outline Construction Method Statement
oLEMP	outline Landscape and Ecology Management Plan
OnSS	Onshore Substation
oPPEIRP	outline Pollution Prevention and Emergency Incident Response Plan
PA2008	Planning Act 2008
R	Requirement
rDCO	Recommended Development Consent Order
RR	Relevant Representation
RFWF	Rhyl Flats Wind Farm
RIAA	Report to Inform Appropriate Assessment
RR	Relevant Representation
SLVIA	Seascape, Landscape and Visual Impact Assessment
SoCG	Statement(s) of Common Ground
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
TCE	The Crown Estate
WFD	Water Framework Directive
WTG	Wind Turbine Generator