

**From:** [Matthews, Roger](#)  
**To:** [NDE](#)  
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**Subject:** Natural Resources Wales NDF HRA and ISA consultation responses  
**Date:** 15 November 2019 16:50:09  
**Attachments:** [image001.png](#)  
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[NDF HRA - NRW response FINAL - Nov 2019.pdf](#)  
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P'nawn da

**National Development Framework (NDF) Habitats Regulations Assessment (HRA) and Integrated Sustainability Appraisal (ISA) consultation**

**Natural Resources Wales consultation responses**

Find attached our consultation responses to the above two consultations. Please do contact us if you require any further information or clarification.

**Roger Matthews MIEMA, CEnv**

Cynghorydd Arbenigol Arweiniol, Asesu Strategol / Lead Specialist Advisor,  
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Gemma Christian  
National Development Framework Team  
Planning Policy Branch  
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Cathays Park  
Cardiff CF10 3NQ

15<sup>th</sup> November 2019

Dear Gemma,

## **Integrated Sustainability Appraisal Report for the Draft National Development Framework**

Thank you for consulting Natural Resources Wales on the Integrated Sustainability Appraisal Report for the Draft National Development Framework 2020-2040. Our comments are made in the context of our responsibilities under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, and in our statutory role as advisers to Welsh Government on the natural heritage and resources of Wales.

We provide a summary of our key comments below, followed by more detail on these, together with more specific comments.

In summary, our main comments are:

1. We welcome your commitment to Strategic Environmental Assessment (SEA) and Integrated Sustainability Appraisal (ISA). We also welcome the iterative and transparent way you have worked with ourselves and other consultees during the development of the Draft National Development Framework (NDF) and its ISA.
2. Whilst there are some innovative aspects to the assessment, for example the explicit consideration of short, medium and long term affects, however, in general the assessment methodology is complex, which makes identifying effects on specific receptors difficult. This complexity also means that aspects of the assessment required under the SEA Regulations are difficult to assess and verify (see pts. 9.1, 9.2 and 9.4 of this letter).
3. The assessment summary appears to include some discrepancies, which may limit its ability to effectively and robustly inform the plan-maker and wider audience of the likely environmental effects of the NDF in these areas (see pts. 9.3 and 9.5).

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Correspondence welcomed in Welsh and English

4. The consideration of climate change should be strengthened, especially around flood risk and the unsuitability of some sites in targeted growth areas for development due to present and future flood risk (see pts. 12 and 13).
5. We consider that the negative landscape impacts of renewable energy policies deserved greater consideration, especially the implications of the move from land that currently sits within Strategic Search Areas to land within Priority Areas for Renewable Energy (see pt. 15.2.3), and the potential for cumulative impacts (see pt. 15.2.4).
6. Recommendations for mitigation should be strengthened and made more comprehensive (see pt. 10).
7. Monitoring proposals require further development and should be more effectively targeted at areas where likely significant effects have been identified (see pt. 11).

We also present comments on specific topic areas, namely flood risk, water resources, landscape and geodiversity.

Our detailed comments are as follows.

## **8. Inconsistency between significant negative effects in Appendix B and the main report**

- 8.1.** A number of Significant Negative Effects appear to be incorrectly summarised. Two significant negative effects (on ISA Obj. 8 - Air Quality and ISA Obj. 9 – Water Resources) have been identified in the detailed assessment matrices but are missing from both the Summary tables and from the Non Technical Summary. The significant negative long term impact of Policy 20 on Air Quality (p. 183) and Water Resources (p. 185), as identified in Appendix B, is understated as minor negative (i.e. pink in summary table when it is red in Appendix B) and the significant negative impacts of Policy 32 (Cardiff Airport) on air quality (ISA Obj. 8) are also understated – medium and long term are red in Appendix B but only pink in the summary. This error is repeated in paragraph 2.6.10 and in the Non Technical Summary 1.1.43 which only refer to significant negative long term effects on greenhouse gas emissions (Obj. 6).

We seek clarity as to whether this is simply an editing error between drafts, with the main report representing the most recent draft, or whether the significance of the effects illustrated in Appendix B is correct and the main report has overlooked significant negative effects identified in its own analysis, which could raise more significant concerns in the robustness of the assessment overall. Note that we have not been able to check each individual assessment cell in the matrices against the accompanying text.

## **9. Complexity and clarity**

- 9.1.** The assessment is complex and challenging to get to grips with. The very extensive, cross-referenced assessment matrices are daunting and often hard to follow and understand. They could have been made more user-friendly and their presentation improved, for example by using column headings rather than repeating the label in each cell, or by providing a table of policy groupings. The page numbering is also confusing, with the main report and Appendix A in one sequence (pp. 1-78), but Appendix B starting again at page 1 (pp. 1-267), so that pp 1-78 could be in either Appendix B or the main report.
- 9.2.** Because of the complexity, readers are more dependent on the summaries in the text of the main report. There is a lack of clarity as to why certain aspects are highlighted in the summary of recommendations table (Table 2-10) and others are not. For example, recommendations on green infrastructure networks and flood risk are included, but recommendations on sustainable construction (p. 261) or geodiversity (p. 63 of Appendix B) are not.
- 9.3.** Certain summary tables contain significant errors. For example, Table 2-8 (Scores for all policies for all ISA objectives) omits a line for Policy 18 (North Wales Coastal Settlements), as well as mis-recording significant negative effects as minor negative effects as described in Point 1 above. We seek clarity as to whether these tables have been quality checked to ensure that they accurately reflect the conclusions of the assessments as set out in Appendix B.
- 9.4.** The complexity of the assessment makes it hard to track impacts on SEA receptors in the ISA as each is reflected in multiple ISA objectives and guide questions. For example, Table 1-6 'SEA Directive topics and main ISA objectives of relevance' shows Biodiversity as being relevant to Objectives 7, 9, 16 and 17, with each objective having between 5 and 13 decision aiding questions, only a few of which address biodiversity (Table 1-5). Only for Objective 16, which is primarily focussed on biodiversity, would negative impacts on biodiversity definitely translate into a negative score against that objective in the assessment. This limits the effectiveness of the ISA in transparently informing the plan-maker of the likely environmental effects of the draft plan, a key function of SEA. Whilst we support in principle the integrated sustainability appraisal approach, we have consistently maintained that it is essential that specific SEA requirements, as set out in the SEA Regulations, remain distinct.
- 9.5.** In places, the assessment does not appear to reflect the current version of the draft NDF or the ISA. For example, section 2.6.2 states that the NDF does not include a chapter on the spatial strategy, although in fact this is one chapter of current draft

NDF together with a suite of associated policies. Similarly, there appears to be some confusion in the ISA over whether the proposed National Forest is on one site or several, whereas the draft NDF clearly states that it will be on more than one site.

**9.6.** A key purpose of SEA and ISA is to provide an objective assessment of the environmental *etc.* effects of a plan - the priority given to addressing the various effects it highlights is more subjective, depending on, among other things, political will and available funding. Under Policy Grouping 7 (Renewable energy) the ISA text includes reference to '*an accepted degree of landscape change*' (p. 142-3). The assessment goes on to record no landscape impacts for Policies 11 and 13 (Wind and Solar outside of priority areas, and Other renewable energy developments). Both policies include wording that '*benefits are maximised and there are no unacceptable adverse effects on landscape*'. Whilst we recognise that these policies aim to avoid unacceptable adverse effects, they do not aim to avoid all adverse effects and the ISA should reflect this when assessing their effects. We therefore consider that the ISA should be recording a potential negative effect on landscape from these policies.

**9.7.** Table 2.9 (p. 58) summarises cumulative, synergistic and secondary effects together. However, presenting such diverse impacts across a range of policy types as one score risks oversimplifying and limiting its usefulness. For example, for Obj. 13 Landscape, the overall impact is assessed as being neutral, through including positive effects relating to green infrastructure and negative ones relating to wind and solar farms.

## **10. Mitigation and Recommendations**

**10.1.** Because of the length and complexity of the assessment matrices in Appendix B, readers are likely to rely more on the summaries presented in the main report text. The summary of recommendations to enhance the sustainability performance of the draft NDF, presented in Table 2-10, is therefore particularly important. However, this table does not present a comprehensive summary of the assessment, more a headline review, and the rationale over which points have been drawn out from the dozens of recommendations in the full assessment matrices in Appendix B is not clearly explained. We provide two examples below:

**10.1.1.** Important recommendations on geodiversity (p. 63 of Appendix B), biodiversity (p. 265) and sustainable construction (p. 95) are not included in this table. There are also no recommendations included to mitigate green greenhouse gas (GHG) emissions.

**10.1.2.** A key recommendation made on p. 54 of the main reports is not included in the table, namely to subject Policies 20 (Port of Holyhead) and 32



(Cardiff airport), which both have significant negative impacts on GHG emissions, to more detailed analysis of their contribution to GHG emissions to inform a targeted mitigation strategy.

## **11. Monitoring**

**11.1.** It is our view that the monitoring proposals set out in the ISA require further development. The current outline, set out on p.63, Table 2-9 (which should be correctly labelled Table 2-11) appears to be more aspirational than robust and workable. For example, '*Indicators related to condition of biodiversity designations... specifically in relation to the role of the NDF to be developed and agreed.*' For complex matters with many influences, we question whether it is realistic to be able to identify specific effects from the NDF separately from all the other influences.

**11.2.** We understand that the intention is to have an integrated monitoring framework for the NDF and ISA. Within this, we remind you of the SEA requirement to monitor likely significant environmental effects as predicted in the SEA, and so would like to see monitoring focussed in particular on the significant negative effects predicted in some areas, in particular against Objs. 6 (GHG) and 7 (Flood Risk).

**11.3.** For Obj. 7 (Flood Risk), we suggest that monitoring 'loss of functional floodplain as a result of development' should be included.

**11.4.** The *UK Climate Change Risk Assessment 17 (UK CCRA 17)* sets out climate risks for Wales, and these should be considered in their entirety when deciding on appropriate monitoring indicators. For example, ISA Objective 7 (Flood Risk) includes a decision aiding question (p.24) on encouraging 'all new development to be climate change resilient'. Climate change resilience is wider than just flood risk and should be adequately monitored. We recommend including a monitoring indicator around the reduction of wider climate risk and the attainment of climate resilient infrastructure.

**11.5.** We refer you to State of Natural Resources Report (SoNaRR) for additional potential monitoring indicators.

## **Comments on specific topics**

### **12. Climate Change**

We advise that the consideration of climate change should be further strengthened, and actions for adaptation and mitigation more integrated throughout the ISA and NDF.

**12.1.** The NDF should guide Wales in planning for and implementing climate change adaptation measures, to support long term sustainable development and a more

resilient Wales, and the ISA has a key role in evaluating and strengthening how it does this. Currently, decarbonisation aspects appear to get more attention than adaptation/mitigation. The ISA should more clearly highlight the current and future flood risks which may limit development within the focussed growth areas identified in the draft NDF, particularly in Policies 18 (North Wales Coastal Settlements) and 28 (Newport).

**12.2.** We consider that the *UK CCRA 17* should be included in section 2.1.3 in the list of particularly important national documents, together with the Climate Change Adaptation Plan for Wales (currently at final draft stage). Whilst flood risk is the main risk for Wales identified in the *UK CCRA 17*, there are many other risks and challenges to the delivery of climate resilient infrastructure which are set out in this document.

**12.3.** The assessment of Policy 5 – Delivering affordable homes - refers to sustainable construction methods but makes no recommendation that they be adopted. We suggest that this should be included as a recommendation along with the recommendation that *‘the sustainability of sites for development should be a primary consideration over where to situate new homes...’*, and both recommendations should be included in the Summary of Recommendations Table 2-10. Whilst there is a cost to the construction of sustainable new homes, building energy efficient homes which reduce energy use and emissions should actually make housing more affordable in terms of life-time costs even if it results in some additional up-front costs, as ongoing running costs will be significantly reduced. In addition, we consider it is likely that energy efficient and climate resilient communities will be more socially cohesive.

**12.4.** The assessment of Policy 25 – Haven Waterway – is significant positive for GHG emissions (p. 209 of Appendix B). The accompanying text however describes a range of positive and negative impacts. We suggest that this should more accurately be recorded as a mixed effect, not significant positive.

### **13. Flood Risk**

**13.1.** We have some concerns about the priority given to flood risk in the assessment and the NDF. This is a particular concern given that flood risk is likely to increase in the future due to climate change. The ISA highlights the potential for the regional development policies 23, 25, 27, 28 and 29 to have a negative impact on flood risk, but it is not clearly stated that flood risk should be a deciding factor when siting new development. Several of the priority areas for development (e.g. North Wales coastal arc, Newport) are already at heightened risk of flooding. Prioritising more development in these areas will increase the pressure to develop on or near flood plains with associated future problems.

**13.2.** Support for the redevelopment of brownfield sites is included in several NDF policies, but the future flooding constraints and compliance with Planning Policy Wales (PPW) may mean some of these sites are more suited to green infrastructure than housing or industrial development. These potential impacts are not currently reflected in the ISA. There are also potential impacts from exposure to flood risk on health and wellbeing, especially for housing developments.

**13.3.** We welcome the recognition in paragraph 2.6.8 of the extensive flood risk present in areas targeted in the Spatial Strategy, and the risk that the significant level of development proposed would place some new development in active floodplains. The assessment could be improved by looking longer term at how climate change is likely to exacerbate these current day risks. Climate change may mean that difficult decisions will need to be made, especially around the coast, where current and proposed development may not be sustainable in the longer term.

**13.4.** Table 2-10 – Summary of Recommendations and Welsh Government's responses - whilst we accept and agree with the comments referencing PPW and TAN15, we do not agree that the draft NDF *clearly* identifies flooding as a significant issue which may constrain development in many areas. For example, the draft NDF states Welsh Government is "*determined to see development and growth in Newport*" (Policy 28), yet does not as part of the policy or supporting text acknowledge the already significant challenges flood risk presents to this area.

#### **14. Water resources**

**14.1.** We have concerns about whether the ISA correctly identifies all the potential impacts on water resources. Some of the places targeted for development, such as Wrexham and Deeside (Policy 17), and Newport (Policy 28), are in areas which may already be under water stress. The assessment for Newport identifies a potential impact on water quality, and there are several recommendations, including that development should only be permitted where there is adequate capacity in the local sewage system, and that new-builds should incorporate water efficiency measures to minimise consumption. By contrast, there is predicted to be no discernible impact on water resources in the Wrexham and Deeside area and hence no recommendations. We consider that similar impacts are possible in Wrexham and Deeside to those predicted in Newport, and that similar recommendations should therefore be included.

**14.2.** We also note that the summary of recommendations in Table 2-10 does not include any recommendations around mitigating impacts on water resources and quality. We recommend that broad recommendations are included that any



development in growth areas should be sited so that local sewage systems are not over-capacity, and that all new-builds should include water efficiency measures.

## **15. Landscape**

Landscape impacts are predicted from several NDF policies, many of which may be mitigated by sensitive siting and strategic green infrastructure. The impacts from renewable energy developments, particularly wind and solar power, will be significant and often cannot be mitigated. The urgent need to decarbonise energy supply leads to the acceptance in the policy of landscape change, but this does not reduce the impact on the landscape.

### **15.1. Green infrastructure – need for further guidance**

Better landscape design is often a key to creating appropriate, robust and resilient landscapes that can accommodate new development. There is potential for significant positive impacts on landscape and visual resources from policies that promote green infrastructure, but in order to realise this, we consider that the NDF will need supporting with further guidance to inform subsequent programmes and projects.

### **15.2. Renewable Energy policies**

The following comments relate to the assessment of the landscape impacts of Policies 10, 11, 12 and 13 (pp. 142-143).

#### **15.2.1. Acceptability of adverse impacts**

We note that the assessment states that Policies 11 and 13 would have a neutral impact, 'as the policy states that planning applications must demonstrate there are *'no adverse impacts' by way of... landscape and visual...*'. The current policy wording in the draft NDF (p. 40 of NDF) however states that there must be '*no unacceptable adverse effects...*'. This wording implies that some adverse impacts may occur but may be considered acceptable: if this is the case, the assessment should record a potential negative landscape impact.

#### **15.2.2. Balancing landscape and visual effects with the urgent need to decarbonise energy generation**

We consider that the policies relating to Priority Areas for renewable energy, and renewable energy outside of Priority Areas (Policies 10 and 11) would have a significant adverse effects on Wales's landscapes (not minor negative as set out in p. 142 of Appendix B), because of the scale of developments envisioned combined with the policy of accepting landscape change from wind and solar farm developments, often in rural, upland or undeveloped landscapes. This is particularly so for wind farms, that are known to have very significant visual effects. However, as the NDF sets out, the wider planning need is for a rapid decarbonisation of energy generation in the context of a climate emergency (see

pt. 8.6 above). Opportunities to mitigate the landscape and visual effects on this scale are limited. However, we understand that Welsh Government are commissioning further technical guidance on this subject, which we welcome.

**15.2.3. The spatial pattern of Priority Areas in relation to Strategic Search Areas and the difference in landscape and visual effects**

We recommend that the assessment consider in more depth the implications of the policy change from the former Strategic Search Areas (SSAs) to the proposed Priority Areas for Renewable Energy (PAREs). In particular, the spatial pattern of Priority Areas differs from the spatial pattern of SSAs that the Priority Areas would replace. Priority Areas are much larger than SSAs, reflecting the need to increase the amount and scale of developments. Whereas SSAs tended to be located on open rolling upland plateaux with forestry, Priority Areas tend to be also located on enclosed farmland in some areas, notably in parts of Ceredigion and Carmarthenshire. We note a strong correlation with Priority Areas avoiding large areas of LANDMAP's Visual and Sensory Aspect areas that were evaluated as 'high' or 'outstanding', which tend to be undeveloped, remote, tranquil upland areas and not lowland enclosed farmland.

As Priority Areas to some extent avoid the uplands, which society tends to value most highly for their natural beauty, this leads to some Priority Areas in lowland areas closer to where more people live, which would be likely to lead to more residential amenity effects. The assessment does not explore the issue of whether this is the correct option for the NDF in landscape terms for fitting in the Priority Areas.

**15.2.4. Cumulative landscape and visual effects**

We consider that potential negative cumulative landscape impacts deserve greater discussion and consideration in the ISA. As the Priority Areas identified in Policy 10 cover a significant land area, and as Policy 11 also allows for some large wind and solar farm developments outside of these Priority Areas, the effect, despite the spatial policy of the NDF, may be to allow much more flexibility to developers in their site search. In consequence, a developer is likely to choose the easiest and most productive locations to develop. This could lead to clusters of developments that would provide cumulative landscape and visual effects in some parts of Wales. The Cumulative, synergistic and indirect effects section of the ISA (p. 57) does not discuss this adequately and simply records mixed impacts (+/-) in Table 2-9.

**15.3. Mobile Action Zones: risk of cumulative landscape and visual effects**

NDF Policy 6 supports an increase in the scale and numbers of mobile telecommunications developments, and that there is a presumption in favour

provided there are no significant adverse landscape impacts. Although the assessment records a minor negative impact, we consider there could be a risk of significant adverse landscape and visual impacts occurring from the collective clutter that this form of development could produce. We agree with the mitigation suggested (p. 105) that such infrastructure should be '*carefully managed and located*' to avoid adverse landscape impacts, and further recommend that guidance on this is developed.

#### **15.4. Compact towns and tension with space for urban green infrastructure**

We consider that there is a potential for adverse impacts on landscape and townscape from the sustainable urban growth supported in Policy 1, although the ISA records only positive impacts (p. 77), not mixed effects. NDF Policy 1 sets up a tension between a desire for higher density development in compact towns, and the need more widely to significantly increase our planning and implementation of urban green infrastructure, including gardens, parks, open spaces and street trees. There would be a conflict if in practice the policy led to infilling gardens or not providing the necessary scale of green areas within a development. For example, in 2013, in Wales, just 1% of all urban tree cover (a principal component of urban green infrastructure) was found in areas of high-density housing, often being those areas experiencing the highest levels of deprivation. Private residential gardens made up 35% of Wales' urban areas, providing 20% of all our towns' tree canopy, being 29% of all urban trees (figures from Natural Resources Wales' *Tree Cover in Wales' Towns and Cities*, 2016, p. 64). This study also showed that 159 of Wales' 220 towns lost canopy cover between 2006 and 2013, including 7000 large trees and 20 hectares of urban woodland.

We suggest expanding the seventh recommendation in Table 2-10 Summary of Recommendations (which currently refers to consideration of the potential impact of dense urban development on air quality) so that it covers the potential implications for green infrastructure as well.

#### **15.5. Area policies that favour development**

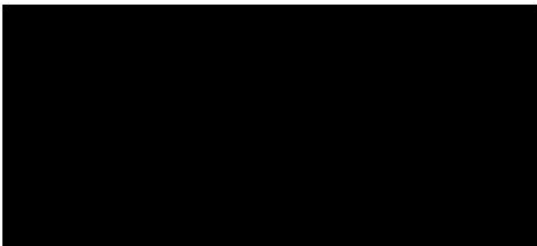
The ISA identifies the potential for Policy 20 (Port of Holyhead) to have adverse landscape impacts on the nearby Anglesey Area of Outstanding Natural Beauty (AONB). We support the recommendation made on p. 192 around ensuring the AONB is protected or enhanced by development in the region. Likewise, Policy 23 has potential impacts on the Gower AONB, and we support the recommendation on p. 215 relating to the need for careful consideration of sensitive landscapes and seascapes or biodiversity assets to avoid adverse impacts. We suggest that these recommendations are included in Table 2-10 Summary of Recommendations in the ISA report.

### **16. Geodiversity**

We continue to have some concerns over the way geodiversity is considered in the assessment, as set out in our previous responses. In previous consultation responses Natural Resources Wales has asked for recognition that geodiversity has value in its own right, and that it should be explicitly included in the assessment, as opposed to simply being considered as part of biodiversity. The inclusion of geodiversity alongside biodiversity in Obj. 16 is welcomed. However, in the policy groupings, preferred options and NDF Outcomes in the ISA and NDF, the distinct consideration of geodiversity is lost (see also pt. 8.4 above).

We hope the above is of use. Should you have any queries regarding these comments, please do not hesitate to contact Roger Matthews or Anne MacDonald, via [strategic.assessment@cyfoethnaturiolcymru.gov.uk](mailto:strategic.assessment@cyfoethnaturiolcymru.gov.uk).

Yours sincerely,



**Prys Davies**  
**Director – Corporate Strategy and Development**

Gemma Christian  
National Development Framework Team  
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Welsh Government  
Cathays Park  
Cardiff CF10 3NQ

15<sup>th</sup> November 2019

Dear Gemma

**Habitats Regulations Assessment of the draft National Development Framework – incorporating the Habitats Regulations Assessment Report, Appendix A: Rules of Thumb, and Appendix B: Implications for the Natura 2000 network of Priority Areas of solar and wind energy development across Wales**

Thank you for consulting Natural Resources Wales on the Habitats Regulations Assessment (HRA) of the draft National Development Framework (NDF), incorporating the Habitats Regulations Assessment Report, Appendix A: Rules of Thumb, and Appendix B: Implications for the Natura 2000 network of Priority Areas of solar and wind energy development across Wales. Our comments are made in the context of our role as the Appropriate Nature Conservation Body (ANCB) under the Conservation of Habitats and Species Regulations 2017.

We provide our key comments on the consultation documents below, and provide more detail on these, together with more specific comments on the HRA Report and Appendix B in the attached Appendix 1, and on Appendix A HRA Rules of Thumb in the attached Appendix 2.

1. We welcome and support Welsh Government's commitment to the HRA process. We also welcome the informal opportunities we have had to provide comments as the preliminary HRA screening has developed.
2. **Policy 3 – Public Investment, Public Buildings and Publicly Owned Land** – we disagree that this policy should be screened out of the HRA. This is because both the policy and supporting text refer to positive consideration being given to potential future



development on publicly owned land. Publicly owned land could include or lie adjacent to European sites, and therefore the policy has the potential to have a likely significant effect on them. We consider that this policy should be screened in for appropriate assessment, after which it should be possible to defer down to lower tier plan or project level assessment.

3. **Deferring down** – we are concerned that the HRA does not robustly set out the case for deferring down the policies screened through to appropriate assessment to lower-tier plan or project level in all cases. Deferring down requires a reasonable and meaningful level of assessment based on the detail available at the NDF level, including presenting the case that adverse effects on site integrity can be avoided at lower-tier levels (see pts. 29 - 30 in Appendix 1 for more details).
4. **In-combination assessment** - because the HRA pre-screens 13 of the 33 policies out from HRA, they do not require in-combination assessment at the screening stage. However, an in-combination assessment is required at the appropriate assessment stage, and this is currently absent from the HRA. It is our view that the in-combination assessment should include reference to a wider range of plans and projects than is currently presented in the screening in-combination assessment. In addition, it needs to be explicitly stated that the in-combination assessment at this high strategic level is necessarily limited, and that there is a requirement for ‘down the line’ in-combination assessments as appropriate (see pts. 18 - 27 in Appendix 1).
5. **Policy 8 - Strategic framework for biodiversity enhancement and ecosystem resilience** – whilst we welcome this policy in general, we do not consider that its current wording provides the ‘*protective policy wording*’ for European sites that is asserted in both the in-combination assessment and throughout the appropriate assessment. In order to provide the level of re-assurance that these sections in the HRA report allude to, policy 8 should be amended to explicitly offer a high level of protection to European sites themselves, for example by reflecting the protective policy wording provided by Planning Policy Wales 10, para. 6.4.14, which includes the following statement:  
*...development should be refused where there are adverse impacts on the features for which a site has been designated.*
6. **Policy 10 – Wind and Solar Energy in Priority Areas** – whilst we welcome the assessment that has taken place, it is our advice that the appropriate assessment relating to this spatially defined policy does not provide a sufficiently detailed assessment given the level of detail available, or provide sufficient detail to provide confidence that adverse effects can be avoided at lower-tier plan or project level. In addition, given the explicit *presumption in favour of development* offered by the policy, the presence of Priority Areas of Solar and Wind Energy development within the European sites screening buffers as set out in *Habitats Regulations Assessment Appendix B: Implications for the Natura 2000 network of Priority Areas of Solar and Wind energy development across Wales – HRA Report*, and the requirement to *minimise* as opposed to avoid adverse impacts, we consider that the policy should be amended to make clear that it does not support applications where adverse effects on site integrity cannot be ruled out. This could reflect the protective policy wording provided by Planning Policy Wales 10, para. 6.4.14, as set out in pt. 5 above.

**7. Policy 20 - Port of Holyhead, Policy 25 – Haven Waterway and Policy 32 – Cardiff Airport** – it is our advice that the appropriate assessments relating to these spatially defined policies do not provide sufficiently detailed assessments given the level of detail available, or include sufficient detail to provide confidence that adverse effects can be avoided at lower-tier plan or project level. In addition, the HRAs appear to suggest that it is uncertain whether the policies can be delivered at lower-tier plan or project level without adverse effects on site integrity – this requires clarification because if this were the case, then the policies would either require removing, or amending and re-assessing, or consideration under Article 6(4) of the Habitats Directive before the NDF could be enacted or adopted. We also seek clarity as to why the *high-level assessments* referred to in the HRA Report are not being undertaken at the current time as part of the HRA of the NDF in relation to these three policies.

We hope that you find these comments useful. If you would like to discuss any of these points further please do not hesitate to contact Roger Matthews via our Strategic Assessment mailbox at [strategic.assessment@cyfoethnaturiolcymru.gov.uk](mailto:strategic.assessment@cyfoethnaturiolcymru.gov.uk)

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Prys Davies', with a stylized, flowing script.

**Prys Davies**  
**Director, Corporate Strategy and Development**

## Appendix 1

### Habitats Regulations Assessment Report and Appendix B: Implications for the Natura 2000 network of Priority Areas of Solar and Wind energy development across Wales

8. The draft NDF itself (pg. 10, column 2), the HRA Report (pg. 2, first sentence under *What is HRA*), and the HRA Appendix A - Rules of Thumb (pg. 1, first sentence under 1.2.1 *What is HRA?*) all refer to the requirement to undertake HRA being set out under Regulation 102 of the Habitats Regulations. We presume that the intention was to refer to Regulation 105, which is the Regulation that specifically refers to land use plans in which category the NDF would fall (as defined under Regulation 111).

#### **1.3 The Habitats Regulations Assessment Process**

9. We recommend that the text describing the requirements for Article 6(4) of the Habitats Directive (at the bottom of pg. 2) is modified and clarified to reflect the text set out in *Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC - November 2018*, namely:

- the alternative put forward for approval is the least damaging for ..... the integrity of the Natura 2000 site(s) .... and that no other feasible alternative exists that would not adversely affect the integrity of the site(s);
- there are imperative reasons of overriding public interest, and;
- all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected are taken.

Being an exception to Article 6(3), this provision must be interpreted strictly, and can only be applied to circumstances where all the conditions required by the Directive, listed above, are fully satisfied.

#### **1.4 Approach to HRA of the draft NDF**

10. The final paragraph on pg. 4 states ... *all lower-tier plans and projects within or near to Natura 2000/ Ramsar sites are required to comply with the Conservation of Habitats and Species Regulations (2017) as a matter of law*. We advise that this paragraph requires amending as it is potentially misleading. It is not only plans and projects *within or near to Natura 2000/ Ramsar sites* that are required to comply with the Habitat Regulations – all plans and projects that have the potential to impact upon Natura 2000/ Ramsar sites regardless of their proximity to these sites are required to comply with the Habitats Regulations. The key aspect to consider is whether there is a pathway between the proposed activity and the European site, and this can on occasions extend to some distance from that site, such as impacts on riverine SACs where upstream activities have the potential to discharge contaminants in to watercourses connected to the downstream SAC.

#### **1.5 Assessing likely significant effects on Natura 2000/ Ramsar sites**

11. We have a number of comments in relation to this section of the HRA Report, that we set out below:

The HRA needs to clearly set out how mobile species, typical species and functional linkages should be considered in the HRA (and subsequent down the line

assessments). Section 1.5 would be an appropriate place to do this. We provide definitions below:

- a.** Mobile species – these are species that are interest features of European sites in their own right, but which require consideration beyond European site boundaries because they are migratory, or forage or roost *etc.* ‘off-site’, or whose populations require movement and mixing across fragmented sites (at a meta-population scale). Species that fall in to this category in Wales include:

- Bats
- Migratory fish – shad, sea lamprey, river lamprey, salmon, sea trout and eel
- Marsh fritillary
- Otter
- Hen harrier
- Wintering birds
- Great crested newt
- Sea mammals
- Seabirds

Therefore, European sites whose qualifying features include mobile species, such as those listed above, which may be affected by policies within the NDF, irrespective of the location of the plan’s proposals or whether the species would be in or out of the site when they might be affected, may need to be considered through HRA.

- b.** Typical species – these are species that are not interest features in their own right, but which are the typical species of a habitat which is an interest feature, and which are often referred to in the conservation objectives. At the high strategic level of plan HRA it is often not possible to consider them in any detail, but the potential need for them to be considered in future project level HRAs should at least be highlighted here.

- c.** Functional linkages - the term ‘functional linkage’ refers to the role or ‘function’ that land or sea beyond the boundary of a European site might fulfil in terms of ecologically supporting the populations for which the site was designated or classified. Such land is therefore ‘linked’ to the European site in question because it performs an important role in maintaining or restoring the population of qualifying species at favourable conservation status. Any assessment will need to determine how critical the area may be to the population of the qualifying species and whether the area is necessary to maintain or restore the favourable conservation status of the species. Effects which would not be acceptable within the boundary of a European site may or may not be acceptable if they occur on functionally linked land or sea. These areas may fall within buffers, but they may lie outside. Whilst this is not something that can often easily be considered in plan level assessments, it is something that subsequent project level assessments may need to consider, and should at least be highlighted here.

**12.** Marsh fritillaries are an example of a mobile species which, although declining significantly, are not confined to SACs and are vulnerable to development particularly in the Valleys and in Carmarthenshire. This is acknowledged in the HRA report. The key to marsh fritillary conservation is the availability of more than 50ha of suitable habitat in

good condition within a well-connected landscape, which thereby supports functioning meta-populations. Whilst the HRA Report contains much discussion on pathways and buffer zones, there does not appear to be any that is directly pertinent to marsh fritillaries, which we consider should be highlighted within the HRA Report.

- 13.** In relation to the buffers set out for bats, there are three Annex II species of bat that are features of European sites in Wales, namely lesser horseshoe bat, greater horseshoe bat and barbastelle bat. Whilst the 10 km buffer proposed would appear to be suitable for lesser horseshoe bats, it is considered insufficient to reduce risk to greater horseshoe and barbastelle bat SAC populations given these species regularly travel significant distances, indeed the core sustenance zone for barbastelles is at least 6 km. There are also many examples (T. McOwat Pers Comms.) of greater horseshoe bats rapidly moving between the three Pembrokeshire SAC maternity roosts, as well as barbastelle bats regularly commuting 18 km plus during radio tracking studies (G. Billington & D. Whitby Pers Comms.). We therefore also disagree with the statement regarding long distance movements of greater horseshoe bats which the HRA Report states are only undertaken once annually.

Many SAC bat populations are critically supported by surrounding habitats and a range of 'annex' roosts that are not contained within the designation; our knowledge of these areas is deficient, but it is around these areas that the buffer should ideally be drawn. In the absence of this data, and with due regard for greater horseshoe bat and barbastelle bat ecology, it is our opinion that given the potential scale of development the NDF could indicate, the 10 km buffer distance is not sufficient and should be increased to 20 km for these two species.

- 14.** Otter is a mobile species and populations have been identified at a large geographical scale (Hobbs *et al*, 2011). As a consequence, even where otters are a primary reason for site selection, SACs only support a proportion of the habitat utilised by this species. Whilst it is recognised that SAC's encompass important areas of otter habitat, this species is wide-ranging and will use feeding and breeding habitat outside of the SAC. It is therefore our view that in relation to riverine SACs with otters as a feature, otters should be screened in for appropriate assessment for developments taking place adjacent to watercourses throughout the catchment.

Ref: Chanin P (2003). *Ecology of the European Otter*. Conserving Natura 2000 Rivers Ecology Series No. 10. English Nature, Peterborough.

- 15.** The final buffer zone justification on pg. 6, which relates to riverine SACs, refers only to potential impacts from increased sediment-loaded run-off. Whilst changes in the rate and sediment loading of water run-off may be the commonest potential impact on riverine SACs, there is also the risk of contaminants such as fuel or a variety of chemical spills entering water courses, as well as increased flows of freshwater due to the creation of non-permeable surfaces or surfaces with reduced permeability.

In addition, we are concerned that the final bullet point on pg. 6, relating to the need to screen in downstream riverine SACs regardless of their distance from the proposed development, does not clearly summarise this requirement, in bold, as with the other bullet points above.



## **1.6 Screening Approach, Table 2: Screening Assessment Categories (DTA Handbook)**

16. This table partially replicates a table in the *DTA Publications Habitats Regulations Assessment Handbook* which sets out a list of pre-screening categories which can be used to pre-screen individual policies in or out. These pre-screening categories are widely used in plan-level assessments, and we welcome their use in relation to the NDF.

The partially replicated table in the HRA Report is clear up to and including category J – however, for categories K, L and M, the table does not clearly set out what the conclusion should be. The two paragraphs below then misleadingly state that only category I policies require being taken through Appropriate Assessment. This is not the case as category L policies also require being taken through Appropriate Assessment, as do category M policies as a result of the *People Over Wind and Sweetman v Coillte Teoranta – European Court of Justice, Case C323/17*.

### **Table 3: Screening Assessment of the NDF Policies**

17. We agree with the pre-screening and screening categories assigned to all of the policies, with one exception set out below:

**Policy 3 – Public Investment, Public Buildings and Publicly Owned Land** – we disagree that this policy should be screened out of the HRA. As set out below, this is because the policy and supporting text refer to positive consideration being given to potential future development on publicly owned land. The second part of policy states:

*Strategic and Local Development Plans should review publicly owned land, both redundant and in current use, to identify potential sites for development and re-development, including for mixed use and affordable housing developments that will support the creation of sustainable places* (our underlining)

The supporting text states:

*The Welsh Government, UK Government departments, local authorities and other public landowners should undertake strategic reviews of their land holdings in Wales and consider the NDF Outcomes and spatial strategy. Where publicly owned land could support sustainable places, positive consideration should be given to the future use of this land and whether it could, for example, support new mixed use development, including affordable housing and new commercial activities, or transport infrastructure* (our underlining)

Currently, the HRA Report screens this out based on DTA Publications category B, namely:

*Policies listing general criteria for testing the acceptability/sustainability of proposals. These general policies cannot have any effect on a European site and should be screened out.*

This policy appears to go beyond merely reviewing land holdings, because the supporting text quoted above gives greater weight to developing such areas. When considered in this context, and given that public land could include or lie adjacent to European sites, we consider that this policy should be screened in for appropriate assessment, after which it should be possible to defer down to lower tier plan or project level assessment.

## **2 In-Combination Assessment**

- 18.** We have a number of concerns in relation to the in-combination assessment presented on pgs. 16 – 18, which we set out below:
- 19.** The in-combination assessment at screening only needs to consider policies unlikely to have a significant effect alone, i.e. policies which would have some effect on a site, but the effect would not be likely to be significant but residual non-significant effects remain, after which they must be checked for in-combination effects. This is category J in *Table 2: Screening Assessment Categories*. As set out in Table 3: Screening Assessment of the NDF Policies, no policies have been screened out under category J, so no in-combination assessment at the screening stage is required.
- 20.** However, we note that 20 of the 33 policies have been screened through to Appropriate Assessment, and that the Appropriate Assessments conclude adverse effects on site integrity alone can be ruled out based on deferring the assessments down to lower-tier plan or project level. The Habitats Regulations require that an in-combination assessment is then undertaken at this Appropriate Assessment stage to assess whether there are any in-combination adverse effects that prevent a conclusion of no adverse effects on site integrity from being reached at plan level. This does not appear to have been undertaken separately from the screening in-combination assessment. Our comments below therefore relate to the Appropriate Assessment in-combination assessment requirement.
- 21.** Plans or projects which should be considered for potential in-combination effects with the NDF are those that fall into all of the following 3 categories:
- a.** they have been subject to HRA and the HRA has either concluded no Likely Significant Effects (LSE) or no adverse effect on site integrity, but residual effects remain, and
  - b.** their residual effects could interact with the residual effects of the NDF, for example by magnifying the effects of the NDF, or making a habitat or species feature more sensitive to the effects of the NDF, and
  - c.** they are one of the following:
    - project started but not yet completed;
    - projects consented but not started;
    - ongoing projects subject to repeated authorisations (e.g. annual licences);
    - applications lodged but not yet determined;
    - refusals subject to appeals procedures not yet determined;
    - projects not requiring consent, but which have been approved by the competent authority concerned;
    - proposals in adopted plans;
    - proposals in draft plans published for consultation;
    - allocations or other forms of proposals in adopted development plans;
    - allocations or other forms of proposals in draft development plans published for consultation.
- 22.** It is important to bear in mind that plan-level in-combination assessments are often undertaken on high-level strategic plans which by their nature often lack specific details of proposals that may come forward, such as the nature, timing, duration, scale or location of development. As a result of this, an assessment of their potential impacts,

including any in-combination effects, can often be limited. Therefore, one of the key roles of plan-level in-combination assessments is to set the framework for 'down the line' lower tier plan or project in-combination assessments. It is therefore important not to prematurely rule out effects altogether without a high-level of confidence.

**23.** In relation to the draft Welsh National Marine Plan (WNMP), it is our view that the HRA's conclusion that in-combination effects with the NDF can be ruled out is poorly worded and potentially misleading. The WNMP in-combination assessment ruled out adverse effects on site integrity due to the lack of detail available at the higher strategic level of the WNMP, and deferred the detailed assessments down to lower tier plan or project level in the knowledge that mitigation was available, summarised in the WNMP, that would enable adverse effects on integrity to be avoided at the lower tier level. The conclusion of the NDF in-combination assessment appears to rule out adverse effects on site integrity altogether, not making it clear that the assessment at this high level is necessarily limited, and that assessments at lower levels are required. It is important that the potential effects from lower-tier plans and projects are considered in-combination with the WNMP (and, where appropriate, with lower-tier plans and projects resulting from the WNMP), and this should be explicitly stated in this assessment.

**24.** Similarly, the in-combination assessments with the Wales Transport Strategy and the National Planning Policy Framework (NPPF) should both include an explicit requirement for 'down the line' assessments as appropriate.

**25.** In relation to projects, the HRA Report states:

*The NDF does not include reference to specific NSIPs or DNS or any other project-level development. Such developments would likely originate through lower-tier plans, such as strategic or local development plans. These plans would therefore be subject to the protective policy wording within the higher-tier NDF, and as such no in-combination effects would occur.*

See pts. 27 and 33 below regarding concerns relating to the *protective policy wording* provided by Policy 8 of the NDF. Also see pts. 23 and 24 above regarding the need to explicitly state that lower tier HRA is required (a requirement for deferring down).

Regardless of this, it should be remembered that whilst mitigation may remove adverse effects on integrity when a plan or project is considered alone, residual non-significant effects frequently remain, and it is these that are considered in-combination with the residual non-significant effects of other plans and projects to assess whether they then become significant. The protective policy wording provided by the NDF is unlikely to remove all effects, and therefore stating categorically that *no in-combination effects would occur* is potentially misleading, and unhelpful when considering that one of the roles of plan level HRA is to set the framework for future 'down the line' assessments.

**26.** We suggest that the following plans and projects could have in-combination effects with the NDF, and should therefore also be included in the in-combination assessment:

- Shoreline Management Plans (SMPs);
- River Basin Management Plans (RBMPs);
- Catchment Flood Management Plans (CFMPs);
- Flood Risk Management Plans (FRMPs);
- Regional Waste Plans;

- Regional Transport Plans;
- Water Resources Management Plans;
- Existing and proposed windfarms.

We also suggest that it may be beneficial to make reference to the potential need to consider any Wales related land management strategies that are developed post-Brexit in 'down the line' in-combination assessments.

27. We are concerned that the in-combination assessment section makes reference on a number of occasions to the *protective policy wording* for European sites provided by Policy 8 of the NDF, e.g. in relation to the WNMP and the NPPF, and in relation to projects in general. However, Policy 8 does not appear to offer protection directly for European sites. It is our view that if Policy 8 is to be relied on in the HRA, it should be amended to offer a greater level of explicit support for the protection of European sites, for example by reflecting the relevant wording in Planning Policy Wales 10 (see [pt. 33](#) below for more detail).

#### **4 Appropriate Assessment, 4.1 Overview and Table 4: Appropriate Assessment of Screened-in Policies**

28. We have a number of concerns in relation to the approach taken to the appropriate assessment, and in relation to a number of the policies considered, as set out in the HRA Report on pg. 19 and Table 4. We set these out below:

29. The approach taken in the HRA Report is to rule out adverse effects on site integrity in relation to the 20 policies screened through to appropriate assessment by deferring the assessments down to lower-tier plan or project level. We are concerned that the HRA does not robustly set out the case in all cases as to why this is an acceptable process to follow for each of the policies that are deferred down. Deferring down requires the following:

- a. that the assessment of a policy can only be deferred down if the policy can be delivered in some shape or form at lower tier plan or project level with no adverse effects on site integrity;
- b. that the appropriate assessment at plan level should assess policies/proposals as far as is reasonable and meaningful based on the level of detail available;
- c. where the level of detail is available, the HRA should provide a list of at least the sites that have been taken through to appropriate assessment, and which therefore are also likely to require assessment in the HRA of lower tier plans and projects (this generally refers to policies with a clear spatial element);
- d. that the appropriate assessment should provide a list of the potential generic impacts from the policy;
- e. that the appropriate assessment should provide a list of the generic mitigation measures that ensure that the potential generic impacts (as per the point above) can be avoided, that subsequent lower tier plan and projects can rely on to avoid adverse effects on site integrity (i.e. the mitigation has to be capable of avoiding the adverse effects) – this is necessary in order to provide the confidence that adverse effects can be avoided at lower tier levels;
- f. that it is clearly set out that the conclusion of no adverse effects on site integrity at plan level is based on lower tier plans and projects, having drawn on the generic list of mitigation, undertaking HRA, concluding no adverse effects on site integrity;

- g. that it is clearly set out what the implications are if lower tier plan or project level HRAs cannot rule out adverse effects on site integrity i.e. that the lower tier plan or project will either have to be withdrawn, or amended and re-assessed, or pass the derogations set out under Article 6(4) of the Habitats Directive, namely no alternative solutions, Imperative Reasons of Overriding Public Interest (IROPI) and compensatory measures secured, which the proposal may or may not be able to pass. It should also be made clear that the current plan (NDF) does not support a lower tier plan or project if it is unable to conclude no adverse effects on site integrity.

We are concerned that the appropriate assessment does not consistently provide the information set out above, and we give a number of examples below:

30. Whilst the appropriate assessment provides generic impacts and mitigation in relation to many of the policies, it appears to be absent or of very limited value for a number of policies, including the more spatially referenced policies such as Policy 10 relating to Wind and Solar Energy in Priority Areas. We advise that this additional detail is added to the appropriate assessment where required.
31. We are concerned about the use of the word *consider* in relation to the mitigation measures set out throughout the appropriate assessment, as this could be construed as suggesting that the mitigation measure/s could be *considered* but then not incorporated and the project would still pass the HRA test and be supported by the plan. Rather than *consider*, it may be better to use the word *incorporate*.
32. On pg. 19, which sets out an overview of the appropriate assessment, the text in the final paragraph refers to *appropriate mitigation or compensatory measures*. There is no context given to this reference to compensatory measures, and this could therefore be construed as being part of the appropriate assessment. Compensatory measures cannot be considered in an appropriate assessment, only under the derogations set out under Article 6(4) of the Habitats Directive. We therefore suggest that reference to compensatory measures is removed.

### **Policy 8 - Strategic framework for biodiversity enhancement and ecosystem resilience**

33. Whilst we welcome this policy in general, we do not consider that its current wording provides the *protective policy wording* for European sites that is asserted in both the in-combination assessment and throughout the appropriate assessment.

For example, the text in Table 4, which sets out the appropriate assessment in relation to each of the NDF policies, concludes for each policy by stating that a key mechanism by which adverse effects on site integrity will be avoided is through reliance on Policy 8:

.... as well as compliance with P8 of the NDF (which it is anticipated will indirectly provide protective buffering for Natura 2000/ Ramsar sites by protecting and enhancing ecosystem services, ecological networks and biodiversity in the wider countryside), should ensure that there will be no adverse effect on the integrity of Natura 2000/ Ramsar sites as a result of implementing this policy).

From an HRA perspective, the wording of Policy 8 does not provide the necessary reassurance to conclude that European sites would be protected from adverse impacts.



The policy itself does not refer to designated sites, and the supporting text only refers to them in relation to corridors between them, not the sites themselves.

In order to provide the level of re-assurance that these sections in the HRA report allude to, Policy 8 should be amended to explicitly offer a high level of protection for European sites themselves, for example by reflecting the protective policy wording provided by Planning Policy Wales (PPW) 10, para. 6.4.14., namely:

*Statutory designation of a site does not necessarily prohibit development, but proposals must be carefully assessed to ensure that effect on those nature conservation interests which the designation is intended to protect are clearly understood; development should be refused where there are adverse impacts on the features for which a site has been designated. International and national responsibilities and obligations for conservation should be fully met, and, consistent with the objectives of the designation, statutorily designated sites protected from damage and deterioration, with their important features conserved and enhanced by appropriate management. (Planning Policy Wales 10, para 6.4.14) (our underlining)*

### **Policy 9 – National forest**

- 34.** An additional potential impact that should be recognised in the HRA is the potential, in certain circumstances, for windblown seed to result in regeneration that becomes a management problem on nearby European sites as trees mature, for example sites with heathland or wetland as a qualifying feature.

### **Policy 10 Wind and Solar Energy in Priority Areas**

- 35.** The following comments relate to both the assessment presented in the HRA Report and in the HRA Appendix B: *Implications for the Natura 2000 network of Priority Areas of Solar and Wind energy development across Wales*.

We welcome the dialogue that has taken place with Natural Resources Wales whilst Welsh Government was developing the screening buffers associated with this clearly spatially defined policy, set out in Appendix B. This Appendix also provides a record as to how the priority areas have been developed and amended to further reduce potential impacts from onshore wind and solar development within the Priority Areas.

In relation to the proposed buffers set out on pg. 3 and 4 of Appendix B, we are concerned that the final bullet point relating to the need to screen in downstream riverine SACs regardless of their distance from the proposed development, does not clearly summarise this requirement, in bold, as with the other bullet points above.

In addition, please note pt. 13 above in relation to bats, and specifically our advice to increase the buffer to 20 km for greater horseshoe and barbastelle bat European sites.

- 36.** The intention of Appendix B is presumably to undertake a plan level assessment as far as is reasonable and meaningful before deferring down to lower tier plan and project level assessment. As set out in pt. 29 above, in order to defer down there needs to be confidence that the policy can be delivered at lower tier plan or project level, and this requires the plan level assessment to set out some specific information. Currently the document does provide a narrative on the assessment process, and provide some guidance on what should be screened in, but it does not provide an adequate plan-level assessment of the policy and the proposed Priority Areas for the following reasons:

- the assessment presented does not appear to go to appropriate assessment;
- it does not provide a table of sites and features for which likely significant effects (LSE) cannot be ruled out, and which therefore should go to consideration through appropriate assessment – given the buffers presented this should be a relatively straightforward exercise;
- it does not provide a robust list of potential generic impacts;
- it does not provide a generic list of mitigation measures to provide confidence that lower tier plans and projects can avoid adverse effects on integrity;
- the conclusions presented in Appendix B are not clear, including appearing to draw a conclusion of no LSE when presumably the conclusion should be no adverse effects on site integrity based on deferring the assessment down to project level in the knowledge that projects can incorporate generic mitigation measures (which the assessment does not include);
- It does not state that the NDF does not support proposals where adverse effects on site integrity cannot be ruled out.

37. The policy provides strong support for development through a clear statement that *There is a presumption in favour of development*. It goes on to state:

*Planning applications must demonstrate how.....the following adverse impacts have been minimised: the following identified protected assets: - nature conservation sites and species;* (our underlining)

We note that this directs applicants to *minimise* rather than avoid adverse impacts.

In addition, the supporting text for Policy 10 includes a commitment that states *Natura 2000 sites within the Priority Areas are excluded*. Whilst this is welcomed, we note that this does not exclude applications that may have an offsite impact on European sites.

We are therefore concerned that the policy offers a presumption in favour of development, with only a requirement to minimise as opposed to avoid adverse impacts, and does not provide protection from offsite impacts (as highlighted by the buffers set out in Appendix B). As such, the policy as written could be interpreted as offering support for proposals that could have an adverse effect on the integrity of European sites. **We therefore consider that the policy should be amended to make clear that it does not support applications where adverse effects on site integrity cannot be ruled out.** This could reflect the protective policy wording provided by Planning Policy Wales 10, para. 6.4.14, as set out in [pt. 33](#) above.

Without this higher level of protective wording, there may be a number of additional modifications to the Priority Area boundaries that we wish to discuss with you. For example, the buffer zone of the Migneint SPA includes part of Priority Area 15. This includes the Mynydd Hiraethog SSSI, one of whose features is hen harrier. Although not an SPA, it is considered likely that Mynydd Hiraethog SSSI provides vital supporting habitat for the Migneint hen harrier feature, a species vulnerable to wind turbine blade strike, and which would not be able to accommodate any wind turbines without an adverse effect on site integrity.

38. With regard to movement between SAC maternity roosts for greater horseshoe bat in Pembrokeshire we consider that Priority Areas 11 and 12 as shown in Appendix B, Figure 2, should be revised to maintain landscape connectivity between SACs and areas of significance for this Annex II bat species. This may require a modelling

exercise to be undertaken to predict the likely least resistance routes for bats, and we would be happy to have further discussions with you in relation to this.

### **Policy 17 – Wrexham and Deeside**

39. This policy supports Wrexham and Deeside as the primary focus for regional growth, and it is likely that a significant proportion of this will be on land located between Mold, Wrexham and Chester. This has potential to adversely affect the Deeside and Buckley Newt Sites SAC and the Johnstown Newt Sites SAC, each designated for great crested newts. Potential direct and indirect impacts can be mitigated for if developments accord with the Flintshire and Wrexham Local Planning Authority (LPA) Supplementary Planning Guidance, links below, and we consider that the HRA should reference these.

- <https://www.flintshire.gov.uk/en/PDFFiles/Planning/SPG-8a-Great-Crested-Newt-Mitigation-Requirements.pdf>
- [https://www.wrexham.gov.uk/assets/pdfs/planning/consultations/draft\\_spg35.pdf](https://www.wrexham.gov.uk/assets/pdfs/planning/consultations/draft_spg35.pdf)

### **Policy 20 - Port of Holyhead, Policy 25 – Haven Waterway and Policy 32 – Cardiff Airport**

40. As set out in pt. 29 above, when deferring down it is necessary for the policy to be deliverable in some shape or form at lower tier level with no adverse effects on site integrity, and it is necessary for the plan level appropriate assessment to demonstrate this based on the level detail available as far as is reasonable and meaningful. It is our advice that the appropriate assessments relating to these three spatially defined policies do not provide sufficiently detailed assessments given the level of detail available, or provide confidence that adverse effects can be avoided at lower-tier plan or project level.

The spatial nature of these policies enables a more detailed level of assessment to be undertaken than is possible for the other non-spatially referenced policies. In particular, it is our view that a more detailed assessment of the European sites and features that have the potential to be impacted is possible. Currently, the assessments presented in the HRA Report contain the same relatively superficial level of detail as that presented for the non-spatially referenced policies.

We also note the following text in the HRA Report for Policy 20 - Port of Holyhead, with similar wording also used in relation to policies 25 and 32:

*...it is also considered essential that a high-level assessment is carried out (prior to any lower-tier assessments) in order to determine whether Natura 2000/ Ramsar sites can accommodate any port expansion and/or an increase in shipping.*

*This may be useful for directing further work at the future plan/project stages but would certainly provide essential context for this policy before it can be implemented in any way. (our underlining)*

This raises to key questions:

- Firstly, this appears to suggest that it is uncertain whether the policies can be delivered at lower-tier plan or project level without adverse effects on site integrity. This requires clarification because if this were the case, then the policies would either require removing, or amending and re-assessing, or consideration under Article 6(4) of the Habitats Directive before the NDF could be enacted or adopted.

- Secondly, we seek clarity as to why the *high-level assessment* referred to in the text quoted above is not being undertaken currently as part of the HRA of the NDF in relation to these three policies.

## Appendix 2

### Appendix A: Habitats Regulations Assessment: Rules of Thumb

41. The third UK SPA review (Stroud *et al.* 2016) summarised the outcomes of Phase 1 of the third UK's network of Special Protection Areas (SPAs) Review, and is published on the Joint Nature Conservation Committee (JNCC) website <http://jncc.defra.gov.uk/page-7309>. It built on the previous network assessments in 1989 and 2001, and placed its findings in the wider context of supporting policies and activity to deliver the objectives of Article 4 of the EU Directive on the conservation of wild birds (2009/147/EC; the Birds Directive, Directive 2009/147/EC). The findings of Phase 2 of the third UK SPA Review advised Governments on the sufficiency of the network for 151 species of birds, and concluded that UK SPA suites for 87 species/populations are insufficient to meet the requirements of Article 4 of the Birds Directive for reasons of either numbers, distribution or ecological requirements. UK devolved administrations are developing a prioritised framework to deliver the options required to ensure the SPA network meets sufficiency for these 87 species/populations. We recommend that the text above is reflected in the Rules of Thumb document, and that when the NDF is reviewed, consideration is made of any revisions to the Welsh SPA network.
42. As we have previously identified, the Rules of Thumb document does not set out how mobile species, typical species and functional linkages should be considered in the HRA. It would be useful to include this information in the HRA Rules of Thumb document, together with highlighting the need for their consideration as part of the HRA process. We provide more detail relating to this in pt. 11.
43. Pg. 8, Table 5, Broad SAC designations and associated qualifying features (habitats and species) – we have the following comments in relation to this table:
- the table should include reference to fens;
  - change terrestrial snails in Bog/Wet Heath SACs and Coastal SACs to terrestrial invertebrates to include marsh fritillary and southern damselfly;
  - add plants to Woodland SACs, Riparian/River SACs, Lake SACs and Estuarine SACs.
44. Pg. 10, 3.2.3 – to clarify the text in this section, policies that refer to Developments of National Significance (DNSs) do require HRA consideration at plan level to the extent that it is reasonable and meaningful, before they can be 'deferred down' to lower tier plan or project level.
45. Pg. 10, 3.2 - in relation to several of the NDF Proposals listed under 3.2, direct loss of habitat is also a potential impact due to land take, e.g. under 3.2.6 Housing and 3.2.7 Mineral concessions.
46. Pg. 10, 3.2.9 – this paragraph on natural resource management/ecosystem services should acknowledge that this management itself could have impacts on European sites that may require HRA.
47. Pg. 11, 3.3.3 Impact Pathways to consider – we continue to have some concerns regarding the specific buffers that have been set out in this section, because of the



potentially significant influence on the HRA screening that these buffers may subsequently have. There are inevitably many uncertainties about subsequent projects that may come forward and be supported by policies in the NDF, regarding their nature, timing, duration, scale and location, *etc.*, and therefore the potential impacts that they may have on European sites. Therefore, any guidance on the HRA at this plan level needs to take a precautionary approach. It is not clear if all of the buffers provided are based on a precautionary approach, or on specific pieces of project-level casework that may or may not have wider applicability. We would welcome clarity on the buffers set out in the document, on this question.

For example, the document quotes studies for the Morecambe Bay Partnership (Liley *et al.*, 2015) which identified a distance of 3.45 km as being the average distance people will travel for a day trip to a designated site. Based on this it states that if an NDF proposal could lead to large housing developments within 3.5 km of a European site, it should be screened in for consideration under HRA. It is not clear if the Morecombe Bay study figures would also be appropriate for all proposals for large housing developments across Wales. The caveat set out at the foot of pg. 11, “*These distances are for guidance only, where a potentially significant effect is identified, a thorough assessment of the impact pathways and distance over which an effect could occur would be undertaken on a case by case basis during the full HRA of the NDF*” (our underlining) does not provide reassurance because it is worded so that it only applies after a proposal has been screened in or out using the information provided in this document.

Note that we have not considered and confirmed each of the specific buffers set out in the Rules of Thumb document individually.

48. Pg. 11, 3.3.3, Land-take, second bullet pt. – this includes an example and states *e.g. installation of a pipeline would lead to loss during construction, but habitats could be restored upon completion*. We consider that *may* would be better word than *could* as some habitats are easier than others to restore.
49. Pg. 11, 3.3.3, Habitat degradation, second bullet pt. – this bullet point refers to a 3 km buffer from European sites for increased sedimentation and pollution entering watercourses. This would appear to be incorrect. It should reflect the other bullet points relating to watercourses (*e.g.* pg. 12, Effects on water quality or quantity, first bullet pt.), where the buffer is 3 km from a watercourse, followed by checking for hydrological links to downstream European sites.

This bullet pt. should also include reference to increased nutrient loading, in particular nitrogen (N) and phosphorus (P) inputs, including from treated sewage. This is a potentially relevant consideration in relation to new housing or industrial developments and any associated requirement for new sewage treatment facilities/discharges. It is also a relevant consideration for *Effects on water quality or quantity* below.

50. Pg. 15, 4.1.2, Rules 3 and 4 – these rules refer to collating qualifying features and conservation objectives, and refer the user to this HRA Rules of Thumb document to source this information in the first instance. We are concerned that this document does not contain detailed or comprehensive information on either of these areas. We advise that users should refer to Core Management Plans (or their equivalent in England)

when seeking this type of information, which can be accessed via the Natural Resources Wales website (link provide below).

A number of the links provided in Appendix A do not link to the latest version of Core Management Plans, and some link to third party websites that no longer host copies of the Core Management Plans. We recommend that all searches for Core Management Plans of Welsh European sites should use the Natural Resources Wales protected sites search engine linked below:

<https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en>

51. Pg. 16, Rule 6 – in relation to this Rule, it is worth highlighting the recent *People over Wind* ruling from the Court of Justice of the European Union (CJEU), which states that “...in order to determine whether it is necessary to carry out...an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site.” CJEU case c-323/17, paragraph 40.
52. Pg. 16, Rule 6 – also in relation to this Rule, the last sentence states ‘...or incorporating appropriate wording to ensure that any future development brought forward under the policy/strategy/proposal is required to undertake HRA prior to permission being granted’ when referring to measures that would avoid or mitigate a potential impact. Whilst we support being clear in this document that HRA will be required at project level, it should be noted that undertaking HRA at a lower tier level does not remove the requirement to undertake HRA at this plan level, as far as is reasonable and meaningful.