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15th 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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Prys Davies', with a stylized, cursive 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 re-assurance 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

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.