

Welsh Government

M4 Corridor around Newport

Environmental Statement Volume
3

Appendix 10.1: Ecology and
Nature Conservation Legislation
and Planning Policy

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1 Legislation and Policy Context

1.1 Legislation and Policy Context

Relevant Legislation

1.1.1 The following relevant legislation has been considered within this assessment.

- The Conservation of Habitats and Species Regulations 2010.
- The Countryside and Rights of Way Act 2000.
- Wildlife and Countryside Act 1981 (as amended).
- The Natural Environment and Rural Communities (NERC) Act 2006.
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003.
- Eels (England and Wales) Regulations 2009.
- Hedgerows Regulations 1997.
- The Protection of Badgers Act 1992.

1.1.2 EC Directives 2009/147/EC on the Conservation of Wild Birds (the Birds Directive) and 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive) are also relevant.

1.1.3 The Welsh Government has particular responsibilities with respect to Sites of Special Scientific Interest under section 28G of the Wildlife and Countryside Act 1981. An authority to which this section applies has the duty of exercising its functions to take reasonable steps, consistent with the proper exercise of those functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is notified as being of special scientific interest.

1.1.4 All wild birds, their nests and eggs are protected under Part 1 Section 1 of the Act. Birds listed in Schedule 1 of the Act are subject to special protection. Wild animals listed in Schedule 5 are protected under Section 9. Plants listed in Schedule 8 are protected under Section 13 of the Act.

1.1.5 The Birds Directive provides a framework for the conservation and management of, and human interactions with, all wild birds in Europe. Birds listed in Annex 1 are afforded special protection.

1.1.6 The main aim of the Habitats Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive at a favourable conservation status, introducing robust protection for those habitats and species of European importance. Member States are required to take requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) and plant species in Annex IV (b).

1.1.7 Under Section 40 of the Natural Environment and Rural Communities Act 2006, the Welsh Government must, in exercising its functions, have regard, so far as is

consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

1.1.8 Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat. The Welsh Government must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity 1992.

1.1.9 Section 42 of the Act requires the Welsh Government, in consultation with Natural Resources Wales (NRW), to publish and keep under review and revise as appropriate, a list of the living organisms and types of habitat which in its opinion are of principal importance for the purpose of conserving biodiversity.

1.1.10 Without prejudice to the duties under section 40, the Assembly must:

‘(a) take such steps as appear to the Assembly to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or

(b) promote the taking by others of such steps.’

1.1.11 The Well-being of Future Generations (Wales) Act 2015 includes a number of well-being goals (Part 2 Section 4), the second of which is " A resilient Wales" described as:

"A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)."

1.1.12 Part 2 Section 3 of the Act places a well-being duty on public bodies (which include the Welsh Ministers) requiring that:

‘(1) Each public body must carry out sustainable development.

(2) The action a public body takes in carrying out sustainable development must include—

(a) setting and publishing objectives (“well-being objectives”) that are designed to maximise its contribution to achieving each of the well-being goals, and

(b) taking all reasonable steps (in exercising its functions) to meet those objectives.

.....’

1.1.13 The Environment Bill also includes measures to provide an integrated natural resource management process to deliver the sustainable management of natural resources. That means the collective actions (including non-action) required for managing the maintenance, enhancement and use of natural resources in a way, or at a rate, which enables people and communities to provide for their social, economic and environmental well-being in Wales.

1.1.14 This recognises that public bodies currently have to consider a broad range of environmental data, evidence and advice when making decisions, but this may not always be fully taken into consideration in a timely way. It is intended that the Environment Bill will help to overcome this by introducing a requirement on public

bodies to co-operate, share information, jointly plan for and jointly report on the management of natural resources, of which climate resilience and climate mitigation will be a key strand.

Planning Policy Context

National Planning Policy

Planning Policy Wales

- 1.1.15** Planning Policy Wales (PPW) (Welsh Government, 2016) provides a national policy framework for Wales. Chapter 5 of PPW covers 'Conserving and Improving Natural Heritage and the Coast'. A number of objectives are listed in paragraph 5.1.2 of the document, of which the following are of relevance:

'Promote the conservation of landscape and biodiversity, in particular the conservation of native wildlife and habitats;

Ensure that action in Wales contributes to meeting international responsibilities and obligations for the natural environment;

Ensure that statutorily designated sites are properly protected and managed; and Safeguard protected species.'

- 1.1.16** Paragraph 5.5.2 of PPW states the following:

'When considering any development proposal (including on land allocated for development in a development plan) local planning authorities should consider environmental impact, so as to avoid, wherever possible, adverse effects on the environment. Where other material considerations outweigh the potential adverse environmental effects, authorities should seek to minimise those effects and should, where possible, retain and, where practicable, enhance features of conservation importance.'

Technical Advice Note 5: Nature Conservation and Planning

- 1.1.17** Technical Advice Note (TAN) 5 provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation (Welsh Assembly Government, 2009b). The TAN provides advice for local planning authorities on:

- the key principles of positive planning for nature conservation;
- nature conservation and Local Development Plans;
- nature conservation in development management procedures;
- development affecting protected internationally and nationally designated sites and habitats;
- development affecting protected and priority habitats and species.

Local Planning Policy

- 1.1.18** The Scheme lies within the administrative areas of Newport City Council and Monmouthshire County Council. For the purposes of the ecology and nature conservation assessment, relevant policies from these local planning authorities

have been considered. In addition, policies from the adjacent administrative area of Cardiff City Council have been considered.

1.1.19 Relevant local planning policies from the following documents have been considered in the assessment.

- Newport Local Development Plan 2011-2026 (Newport City Council, 2015a).
- Monmouthshire Local Development Plan 2011-2021 (Monmouthshire County Council, 2014).
- Cardiff Local Development Plan 2006-2026 (Cardiff Council of the City and County of Cardiff, 2016).

1.1.20 Newport City Council has also published the River Usk Strategy (Newport City Council, 2009), and Wildlife and Development Supplementary Planning Guidance (SPG) (Newport City Council, 2015b), the relevant recommendations of which have been taken into account.

1.1.21 The key relevant policies are set out below.

Newport Local Development Plan 2011-2026

1.1.22 Objective 6 – Conservation of the Natural Environment of the Plan is:

‘To protect and enhance the quality of the natural environment, including landscape, protected habitats and species of principal importance for biodiversity in Wales (regardless of greenfield or brownfield status) and the protection of controlled waters.’

1.1.23 The key policies relevant to ecology and nature conservation are:

- SP5 Countryside;

‘Development in the Countryside (that is, that area of land lying beyond the settlement boundaries shown on the proposal and inset maps) will only be permitted where the use is appropriate in the countryside, respects the landscape character and biodiversity of the immediate and surrounding area and is appropriate in scale and design. Housing development, rural diversification and rural enterprise uses, beyond settlement boundaries, will only be appropriate where they comply with national planning policy.’
- SP9 Conservation of the Natural, Historic and Built Environment;

‘The conservation, enhancement and management of recognised sites within the natural, historic and built environment will be sought in all proposals.’
- CE8 Locally Designated Nature Conservation and Geological Sites;

‘Proposals affecting locally designated sites will only be permitted where:

 - i) There would be no overall loss of the nature conservation resource for which the site has been designated;*
 - ii) There would be no significant adverse effect on the geological interest of the site;*
 - iii) Appropriate mitigation or compensatory measures can be achieved.’*

- CE9 Coastal Zone.

'Development will not be permitted in the coastal area or adjoining the tidal river unless:

- In the undeveloped coastal area such development is required to be on the coast to meet an exceptional need which cannot reasonably be accommodated elsewhere;*
- The area is not itself at risk nor will the proposed development exacerbate risks from erosion, flooding or land instability*

Development which required a coastal location should be sited within the developed coastal zone.'

1.1.24 Newport City Council's River Usk Strategy includes a section on Ecological Interests and Opportunities (Section 6). This describes the ecological designations of the river including the qualifying features of the River Usk Special Area of Conservation (SAC); the requirements for Habitats Regulations Assessments, European Protected Species; the Newport Urban Otter Habitat Survey - Phase 2; development in the vicinity of the river; ecological opportunities; and consultations with relevant organisations.

1.1.25 The key recommendations of this section of the strategy are as follows.

- *'To continue to work closely with the Environment Agency and Countryside Council for Wales to ensure that future proposals or plans do not adversely affect the nature conservation features of the River Usk.*
- *To comply with the Conservation (Natural Habitats &c) Regulations 1994 and carry out Habitats Regulations Assessments to ensure that development does not have a detrimental impact upon the Special Area of Conservation or the special features for which it was designated.'*

Monmouthshire Local Development Plan 2011-2021

1.1.26 The Plan recognises that:

'Monmouthshire has major biodiversity and landscape resources that need to be preserved and should be protected, managed and enhanced.

There is a need to improve connectivity within the landscape through protecting and improving existing wildlife networks and corridors and creating new linkages to allow species to move and adapt to climate change impacts.'

1.1.27 The LDP seeks to influence these issues through a range of measures, those relevant to ecology and nature conservation being:

'Ensuring that new development does not cause harm to international, national and locally protected sites and species and that where appropriate and necessary, avoidance, mitigation and compensation measures are incorporated, while ensuring that new benefits for Biodiversity are explored.

Undertaking a Habitats Regulations Assessment to ensure that the cumulative effects of development in Monmouthshire and adjoining areas do not result in harm to internationally designated nature conservation sites.

Ensuring that biodiversity is considered in any development in order to protect any existing interest on the site and encourage biodiversity enhancements where necessary.'

1.1.28 The relevant Objective - Valuing our Environment of the plan is:

'8. To protect, enhance and manage Monmouthshire's natural heritage, including the Wye Valley AONB, the County's other high quality and distinctive landscapes, protected sites, protected species and other biodiversity interests and the ecological connectivity between them, for their own sake and to maximise benefits for the economy, tourism and social well-being.'

1.1.29 The key policies relevant to ecology and nature conservation are:

- Policy S13 – Landscape, Green Infrastructure and the Natural Environment.

'Development proposals must:

1. *Maintain the character and quality of the landscape by:*
 - i) *identifying, protecting and, where appropriate, enhancing the distinctive landscape and historical, cultural, ecological and geological heritage, including natural and man-made elements associated with existing landscape character;*
 - ii) *protecting areas subject to international and national landscape designations;*
 - iii) *preserving local distinctiveness, sense of place and setting;*
 - iv) *respecting and conserving specific landscape features, such as hedges, trees and ponds;*
 - v) *protecting existing key landscape views and vistas.*
2. *Maintain, protect and enhance the integrity and connectivity of Monmouthshire's green infrastructure network.*
3. *Protect, positively manage and enhance biodiversity and geological interests, including designated and non-designated sites, and habitats and species of importance and the ecological connectivity between them.*
4. *Seek to integrate landscape elements, green infrastructure, biodiversity features and ecological connectivity features, to create multifunctional interconnected spaces that offer opportunities for recreation and healthy activities such as walking and cycling.*

- Policy NE1 – Nature Conservation and Development.

'Development proposals that would have a significant adverse effect on a locally designated site of biodiversity and/or geological importance, or a site that satisfies the relevant designation criteria, or on the continued viability of priority habitats and species, as identified in the UK or Local Biodiversity Action Plans or Section 42 list of species and habitats of importance for conservation of biological diversity in Wales, will only be permitted where:

- a) *the need for the development clearly outweighs the nature conservation or geological importance of the site; and*
- b) *it can be demonstrated that the development cannot reasonably be located elsewhere.*

Where development is permitted, it will be expected that any unavoidable harm is minimised by effective avoidance measures and mitigation. Where this is not feasible appropriate provision for compensatory habitats and features of equal or greater quality and quantity must be provided.

Where nature conservation interest are likely to be disturbed or harmed by development proposals, applications must be accompanied by an ecological survey and assessment of the likely impact of the proposal on the species/habitats, and, where necessary, shall make appropriate provision for their safeguarding.

Development proposals shall accord with nature conservation interests and will be expected to:

- i) Retain, and where appropriate enhance, existing semi-natural habitats, linear habitat features, other features of nature conservation interest and geological features and safeguard them during construction work;*
- ii) Incorporate appropriate native vegetation in any landscaping or planting scheme, except where special requirements in terms of purpose or location may dictate otherwise;*
- iii) Ensure the protection and enhancement of wildlife and landscape resources by appropriate building design, site layouts, landscaping techniques and choice of plant species;*
- iv) Where appropriate, make provision for on-going maintenance of retained or created nature conservation interests.'*

Cardiff Local Development Plan 2006-2026

1.1.30

One of the objectives of the Plan under is to deliver economic and social needs in a coordinated way that respects Cardiff's environment and responds to the challenges of climate change. As part of this, the objectives set out the following:

'To protect, manage and enhance Cardiff's natural environmental assets, including:

- The parks, open spaces and allotments in the city that are highly valued by local communities and an important component of Cardiff's quality of life;*
- The strategically important river valleys of the Ely, Taff, Nant Fawr and Rhymney that link the city to the countryside and provide a valuable recreational, biodiversity and amenity resource;*
- Cardiff's countryside, particularly its areas of high landscape value and the coast that provide an important setting to the urban area, provide an agricultural resource and opportunity for recreation;*
- The city's biodiversity, its internationally, nationally and locally designated sites, wildlife habitats and features that contain important species and networks that link together areas of value;*
- Natural resources including geodiversity, the best soils, water and air quality including, the reduction of pollution; and*

- *The role that vegetation plays in combating climate change by providing shading, cooling and carbon sinks.'*

1.1.31 Key Policy KP16: Green Infrastructure states that:

'Cardiff's distinctive natural heritage provides a network of green infrastructure which will be protected, enhanced, created and managed to ensure the integrity and connectivity of this multi-functional green resource is maintained.

Protection and conservation of natural heritage network needs to be reconciled with the benefits of development. Proposed development should therefore demonstrate how green infrastructure has been considered and integrated into the proposals. If development results in overall loss of green infrastructure, appropriate compensation will be required.

Natural heritage assets are key to Cardiff's character, value, distinctiveness and sense of place. They include the city's:

- *Undeveloped countryside and coastline (EN1 and EN2);*
- *Landscape, geological and heritage features which contribute to the City's setting (EN3);*
- *Strategically important river valleys of the Ely, Taff, Nant Fawr and Rhymney (EN4);*
- *Biodiversity interests including designated sites and the connectivity of priority habitats and species (EN5, EN6 and EN7);*
- *Trees (including street trees), woodlands and hedgerows (EN8);*
- *Strategic recreational routes, cycleways and the public rights of way network (T5, T6 and T8);*
- *Parks, playing fields, green play areas and open spaces (C3, C4 and C6);*
- *Growing spaces including allotments, community orchards and larger gardens (C5); and*
- *Holistic integrated surface water management systems (EN10).'*

1.1.32 Relevant policies within the adopted plan include the following.

- EN1: Countryside Protection:

'Development in the countryside, beyond the settlement boundaries identified on the Proposals Map, will only be permitted where the use is appropriate in the countryside, respects the landscape character and quality and biodiversity of the site and surrounding area and where it is appropriate in scale and design. A landscape assessment and landscaping scheme will be required for significant development proposals...'

- EN5: Designated Sites:

'Development will not be permitted that would cause unacceptable harm to sites of international or national nature conservation importance.

Development proposals that would affect locally designated sites of nature conservation and geological importance should maintain or enhance the nature conservation and/or geological importance of the designation. Where

this is not the case and the need for the development outweighs the nature conservation importance of the site, it should be demonstrated that there is no satisfactory alternative location for the development which avoids nature conservation impacts, and compensation measures designed to ensure that there is no reduction in the overall nature conservation value of the area or feature.'

- EN6: Ecological Networks and Features of Importance for Biodiversity;

'Development will only be permitted if it does not cause unacceptable harm to:

- Landscape features of importance for wild flora and fauna, including wildlife corridors and 'stepping stones' which enable the dispersal and functioning of protected and priority species;*
- Networks of importance for landscape or nature conservation.*

Particular priority will be given to the protection, enlargement, connectivity and management of the overall nature of semi natural habitats. Where this is not the case and the need for the development outweighs the nature conservation importance of the site, it should be demonstrated that there is no satisfactory alternative location for the development and compensatory provision will be made of comparable ecological value to that lost as a result of the development.'

- EN7: Priority Habitats and Species;

'Development proposals that would have a significant adverse effect on the continued viability of habitats and species identified as priorities in the UK or Local Biodiversity Action Plan will only be permitted where:

- The need for the development outweighs the nature conservation importance of the site;*
- The developer demonstrates that there is no satisfactory alternative location for the development which avoids nature conservation impacts; and*
- Effective mitigation measures are provided by the developer.*

Where harm is unavoidable it should be minimised by effective mitigation to ensure that there is no reduction in the overall nature conservation value of the area. Where this is not possible, compensation measures designed to conserve, enhance, manage and, where appropriate, restore natural habitats and species should be provided.

- EN8: Trees, Woodlands And Hedgerows.

'Development will not be permitted that would cause unacceptable harm to trees, woodlands and hedgerows of significant public amenity, natural or cultural heritage value, or that contribute significantly to mitigating the effects of climate change.

Biodiversity Action Plans and Management Plans

1.1.33 The following Biodiversity Action Plans are relevant to the assessment.

- UK Post-2010 Biodiversity Framework (Joint Nature Conservation Committee, 2012).
- Newport Local Biodiversity Action Plan (Newport Biodiversity Partnership, 2014).
- Monmouthshire Local Biodiversity Action Plan (LBAP) (Monmouthshire County Council, 2005).
- Trunk Road Estate Biodiversity Action Plan 2004-2014 (Welsh Assembly Government, 2004).

1.1.34 The UK Post-2010 Biodiversity Framework supercedes the UK Biodiversity Action Plan. In 2007 UK Biodiversity Partnership published an updated list of priority UK species and habitats covering terrestrial, freshwater and marine biodiversity to focus conservation action for rarer species and habitats in the UK. The UK priority list contains 1150 species and 65 habitats. The UK list has been used as a reference to draw up the species and habitats of principal importance in Wales under Section 42 of the NERC Act.

1.1.35 The Newport and Monmouthshire Biodiversity Action Plans contain Habitat Action Plans and Species Action Plans for some of the habitats and species recorded within the study area as does the Trunk Road Estate Biodiversity Action Plan. These have been taken into account in this assessment.

1.1.36 Selection of non-statutory sites of local wildlife importance is an important tool for conservation of local biodiversity enabling the planning system to recognise and thus protect or enhance areas of substantive nature conservation value outside the limited network of statutorily protected SSSIs. The Guidelines for the Selection of Wildlife Sites in South Wales (The South Wales Wildlife Sites Partnership, 2004) sets out a common set of guidelines for the selection of Wildlife Sites in the South Wales region. Similar guidance for the whole of Wales is provided in the Guidelines for the Selection of Wildlife Sites in Wales (Wales Biodiversity Partnership, 2008).

1.1.37 Sites of Importance for Nature Conservation (SINCs) designated on the basis of these guidelines are identified in this chapter and the effects of the Scheme on them is assessed.

1.1.38 An important initiative in conservation of biodiversity in the Gwent Levels is the Living Levels Project. The partners in the project are the Royal Society for the Protection of Birds (RSPB), Gwent Wildlife Trust (GWT), Natural Resources Wales (NRW), Newport City Council (NCC), Monmouthshire County Council (MCC), Cardiff City Council (CCC), Rick Turner OBE, Cardiff Story Museum, Sustrans, National Trust, Bumblebee Conservation Trust and Buglife.

1.1.39 The project has been awarded funding of £2,865,300 through the Heritage Lottery Fund's Landscape Partnership programme, which provides grants for schemes aiming to conserve areas of distinctive landscape character. The project plans to work with volunteers, farmers and communities to collectively increase wildlife-friendly management, provide interpretation and create new trails, increasing people's awareness of the area's unique features.

1.1.40 The initial development period of the project will run from January 2016 to June 2017. Subject to successful completion of the development stage, the delivery stage of the project would run from the end of 2017 to the end of 2020.

1.1.41 In addition, the following management plans are considered relevant to the assessment.

- Wye and Usk Catchment Flood Management Plan (Environment Agency, 2010).
- Draft Shoreline Management Plan for the Severn Estuary (SMP2) (Severn Estuary Coastal Group, 2010).

1.1.42 These plans are important in that they set out the policies governing how catchment and coastal flood protection would be managed in the area and hence the future conditions which will prevail when the new road is operational.

1.2 **References**

Cardiff Council (2016) Cardiff County Council Local Development Plan 2006-2026. Deposit Plan. Adopted January 2016.

Environment Agency (2010) Wye and Usk Catchment Flood Management Plan.

JNCC (2012) UK Post-2010 Biodiversity Framework. Joint Nature Conservation Committee

Newport City Council (2015b) Wildlife and Development Supplementary Planning Guidance (SPG)

Monmouthshire County Council (2005) Monmouthshire Local Biodiversity Action Plan

Monmouthshire County Council (2014) Monmouthshire Local Development Plan 2011-2021. Adopted 27 February 2014.

Newport Biodiversity Partnership (2014) Newport Local Biodiversity Action Plan.
Newport City Council (2009) River Usk Strategy.

Newport City Council (2015a) Newport Local Development Plan 2011-2026. Adopted Plan, January 2015.

Severn Estuary Coastal Group (SECG) (2010) Draft Shoreline Management Plan for the Severn Estuary (SMP2)

Welsh Assembly Government (2004) Trunk Road Estate Biodiversity Action Plan 2004-2014.

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Welsh Government (2016) Planning Policy Wales, Edition 8. January 2016.