



Ein cyf/Our ref qA1346892

Mr Dafydd Gruffydd
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By email: dafydd@mentermon.com

10 December 2021

Dear Mr Gruffydd,

**TRANSPORT AND WORKS ACT 1992
TOWN AND COUNTRY PLANNING ACT 1990
THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006
APPLICATION FOR THE PROPOSED MORLAIS DEMONSTRATION ZONE ORDER
AND DEEMED PLANNING PERMISSION**

1. Consideration has been given to the report of the Inspector, Mr Clive Sproule BSc MSc MRTPI MIENVSci CEnv who held a public inquiry between 1 December 2020 and 12 February 2021, into the application made by Menter Môn Morlais Limited (“the applicant”), for:
 - a) the Morlais Demonstration Zone Order (“the Order”), to be made under sections 3 and 5 of the Transport and Works Act 1992 (“TWA”)
 - b) a direction under section 90(2A) of the Town and Country Planning Act 1990 for deemed planning permission to be provided for in the Order (“the Direction”).
2. The Order and the Direction, if made, would authorise the applicant to construct and operate an offshore tidal energy electricity generating station, located in the Irish Sea to the West of Holy Island, Anglesey, together with export cables and onshore infrastructure to provide a proposed grid connection west of Holyhead in Anglesey. The Order would also authorise the compulsory acquisition and use of land for the purposes of the onshore works authorised under the Order and confer other powers in connection with the construction and operation of the works.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

3. A copy of the Inspector's Report ("IR") is enclosed with this letter. The Inspector's conclusions are set out in paragraphs 754 -1076, with recommendations at paragraphs 1077 – 1080.
4. The Inspector recommends the Order should be made subject to amendments and the Direction should be made subject to planning conditions.

The Welsh Ministers' 'minded to' approve letter of 22 October 2021.

5. I issued a letter on 22 October, which confirmed I agreed with the Inspector there is a compelling case for making the Order. However, this was subject to the applicant addressing the following matters, which are also referred to in the Inspector's recommendation at IR 1077:
 - (a) including the Legend text from figures 4-1 to 4-5 in the applicant's Environmental Statement ("ES") Volume II Chapter 4 – Figures (core document ref: MDZ/A28.1) on the Restricted Area Plan (core document ref: MDZ/G13, plan ref: MORMSDRW0001);
 - (b) a triangular extension to the "Restricted Area – Northern" as defined on the Restricted Area Plan - the triangular extension ("The Triangle") is detailed in Figure 5 on page 71 of Natural Resources Wales ("NRW")'s Proof of Evidence, core document ref: POE021; and
 - (c) the Legend text for the "Restricted Area – Northern" as defined on the Restricted Area Plan to be changed to, "Submerged tidal devices".
6. I also indicated I was minded to amend article 3(4) of the Order to ensure the amendments sought to the Restricted Area Plan are secured and controlled by the Order.
7. As I considered these amendments could comprise substantial changes to the Order, I provided an opportunity for representations on these matters, as required by article 13(4) of the TWA. The deadline for representations was 12 November 2021.

Responses to the 22 October letter

8. Representations were received from the applicant, the Local Planning Authority ("LPA"), NRW, Friends of the Earth, Snowdonia Canoe Club, Canoe Wales, Mr and Mrs Roberts, Mr and Mrs Llewellyn (including reference to a Change.org petition), Ms Saboor, Mr Kitchiner, Ms Hughes, and Ms Lloyd.
9. My consideration of the matters raised in this correspondence is set out below.

The Restricted Area Plan

10. The applicant has provided an amended Restricted Area Plan, which includes The Triangle, using the legend on the figure shown on figure 4-5 of the applicant's ES Volume II Chapter 4 – Figures, -amended to in respect of the restricted area – northern to state "Submerged tidal devices". I am satisfied these changes address the amendments recommended by the Inspector. I am also satisfied the amended Restricted Area Plan will serve to mitigate the impact of the works. I note the plan includes footnote text to clarify there may be some surface emergent elements associated with deployment of submerged tidal devices as set out in the ES and/or as required pursuant to articles 20 and 21 of the Order, which relate to lights on tidal

works and safety of navigation, respectively. I am content with the clarification footnote, noting the Order requires an updated navigational risk assessment to be submitted for approval prior to the commencement of any tidal work. The Order also requires the Welsh Ministers to consult with Trinity House and the Maritime and Coastguard Agency before approving any updated navigational risk assessment.

11. Regarding the proposed amendment to article 3(4), I acknowledge the submission of the Device Deployment Protocol, secured through provisions in the Order, combined with the Restricted Area Plan (as amended) will give appropriate mitigation and I am satisfied controls are provided in the Order to ensure the project will fall within the parameters of the ES. In this context I consider the proposed amendment to article 3(4) set out in the “minded to” letter is not required, the provisions in the Restricted Area Plan will be secured by the Order and I am satisfied provisions in the Order provide appropriate control over the project to ensure it is implemented within the parameters of the ES. I also note the offshore works would be subject to requirements for approvals under a marine licence.

Conditions

12. The applicant has submitted an amended list of conditions, which it states have been discussed and agreed with the LPA and NRW. Indeed, the LPA has submitted the same list of amended conditions as the applicant and NRW has confirmed it has discussed the proposed planning conditions with the applicant and LPA and agrees with the suggested amendments to the landscape and habitat compensation conditions. The deemed planning conditions are considered in detail in paragraph 117 of this decision letter.

Other matters

13. A number of the representations raise issues which have already been addressed through the inquiry process. I note there are outstanding objections and concerns regarding the proposed development, however, I am satisfied the Inspector has considered all duly made representations and objections to the proposed project through the inquiry process and the matters of objection are clearly addressed in the Inspector’s report. I have considered the representations made by all those named above. I am satisfied that the concerns raised in that correspondence were issues that were raised before the Inspector.
14. As set out in my letter of 22 October, I am satisfied the Inspector has fully considered the impact of the project on tourism, marine related businesses and recreation and I agree with his reasoning and conclusions on these matters.
15. Regarding the methodology proposed for the updated navigational risk assessment I note an updated Maritime and Coastguard Agency guidance note has been published and the Order has been updated to make reference to the updated guidance.
16. The LPA will be responsible for discharging the deemed planning conditions and for consulting with relevant bodies when undertaking this function as it considers appropriate.
17. I have considered the scheme against the amended Restricted Area Plan. For completeness I set out my full considerations below.

Welsh Ministers' considerations

18. I have carefully considered the arguments put forward by, or on behalf of, all parties. My consideration of the IR is set out in the following paragraphs. All other paragraph references, unless otherwise stated, relate to the IR.

Policy and Legislative Background

UK Policy

19. The Inspector sets out the relevant legislation and policy in IR 758 to 794. Regarding UK Policy, the Inspector notes the applicant has drawn attention to UK National Policy Statements ("NPS"). As the Inspector notes, the focus of these documents are applications for Development Consent Orders under the Planning Act 2008. As this application is made under the Transport and Works Act 1992 and relates to a devolved energy generation project, I do not consider my decision on this application is required to rely on or accord with the NPS. However, I note Welsh legislation and policy also recognises the need for more renewable energy generating capacity.

Welsh Legislation and Policy

Well-being of Future Generations (Wales) Act 2015

20. I note the well-being duty placed on public bodies by the Well-being of Future Generations (Wales) Act 2015 ("WFG Act") to carry out sustainable development.

Environment (Wales) Act 2016

21. To ensure Wales is contributing to the reduction of greenhouse gas emissions, the Environment (Wales) Act 2016 places a duty on the Welsh Ministers to ensure the net Welsh emissions account for the year 2050 is 100% lower than the baseline. Under section 6, a biodiversity and resilience of ecosystems duty is placed on public authorities: 'A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions'.
22. I also note in April 2019 the Welsh Ministers declared a climate change emergency, with a commitment to delivering a low carbon economy and making a decisive shift away from fossil fuels.

Welsh National Marine Plan

23. The Inspector notes the Welsh National Marine Plan ("WNMP") has been prepared and adopted under the Marine and Coastal Access Act 2009 ("MCAA") and in conformity with the UK Marine Policy Statement ("MPS"). The MPS has been adopted by the Welsh Ministers and the other UK administrations. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment.
24. The Inspector sets out the relevant policies of the WNMP in IR 771-784.
25. The Inspector correctly identifies all 13 Plan Objectives in Table 1 of the WNMP are relevant to the proposed works and highlights the overarching Objective 1, to "Support the sustainable development of the Welsh marine area by contributing across Wales' well-being goals, supporting the Sustainable Management of Natural Resources

through decision making and by taking account of the cumulative effects of all uses of the marine environment". I also note Objective 3 specifically refers to marine renewable energy, it seeks to "Support the opportunity to sustainably develop marine renewable energy resources with the right development in the right place, helping to achieve the UK's energy security and carbon reduction objectives, whilst fully considering other's interests, and ecosystem resilience."

26. I acknowledge WNMP Policy SOC_07 is relevant to the determination of the TWA application. I also note WNMP paragraph 133 recognises over the lifetime of the WNMP there is likely to be ongoing change to the seascape character of Wales, resulting most prominently from further marine renewable infrastructure, particularly off the North Wales and South Wales coasts. Similarly, Paragraph 340 of WNMP states, "In relation to Policy SOC_07, it is accepted that the development of marine renewable energy infrastructure will result in changes to the seascape character of Wales and that these changes are an inevitable result of our ambition for marine renewable energy to make an increasingly significant contribution to the overall energy mix".
27. As the Inspector highlights, Policy ELC_03 is a sector specific policy for tidal stream energy. I note paragraph 344 of the WNMP specifically addresses demonstration zones for wave and tidal stream energy. It confirms, under Policies ELC_02 and ELC_03 the use of demonstration zones should be supported and facilitated by using a risk-based approach to consenting, employing adaptive management where this is necessary and appropriate for the management of impacts that are hard to predict at the point of decision making in line with Policy SCI_01. The tidal stream demonstration zone off west Anglesey is identified in the WNMP as providing a good opportunity for developers to deploy, refine and demonstrate technologies before expanding projects into wider commercial scale resource areas, subject to successful tests and acceptability in terms of potential adverse effects.
28. In addition to the points above and the WNMP policies identified in the IR, I note paragraph 341 of the WNMP states, when determining applications for renewable and low carbon energy development and associated infrastructure, planning authorities should give significant weight to the Welsh Government's targets to increase renewable and low carbon energy generation.

Future Wales - The National Plan 2040

29. Future Wales ("FW") is the Welsh Government's national development framework. In accordance with Section 38 of the Planning and Compulsory Purchase Act 2004 Future Wales is part of the development plan. The WNMP has informed the preparation of FW.
30. The Inspector notes the introduction to FW confirms the strategy of the plan includes sustaining and developing a vibrant economy, achieving decarbonisation and climate resilience, developing strong ecosystems and improving the health and well-being of communities. I note policy 9 of FW sets out the need for development proposals to maintain and enhance biodiversity. The Inspector highlights Policy 18 of FW as being relevant to the proposed development, although recognising its scale and legislative context are not the intended subject of the policy. I accept the principles in Policy 18 are relevant to the proposal although I recognise Policy 18 specifically relates to determining renewable and low carbon energy Developments of National Significance applications, which are planning applications under the Town and Country Planning Act 1990.

31. Policy 24 of FW, “North West Wales and Energy”, supports North West Wales as a location for new energy development and investment. In terms of this development, particularly in relation to the deemed planning permission, I note Policy 24 specifically states on-shore developments associated with off-shore renewable energy projects will be supported in principle.

Planning Policy Wales (“PPW”)

32. PPW sets out the land use planning policies of the Welsh Government. The Inspector notes PPW reflects key themes in FW, including climate change, decarbonisation and the sustainable management of natural resources. The Inspector also notes the policy support in PPW for energy storage, which is particularly relevant to the proposed development as the proposed works include a battery storage facility linked to the grid connection substation. I note PPW also reiterates the section 6 duty in the Environment (Wales) Act 2016, confirming that planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions.

Joint Local Development Plan

33. I note, for the purposes of this application, the relevant Local Development Plan is the “Anglesey and Gwynedd Joint Local Development Plan 2011 – 2026” (“JLDP”). The Inspector notes the LPA withdrew its objection prior to the inquiry and, subject to planning conditions, no conflict has been identified with policies in the JLDP.

Policy Conclusions

34. I agree with the Inspector’s view that the existing strategic policies provide strong support for the proposal.

Possible Effects on Character and Appearance

35. I note the Anglesey Area of Outstanding Natural Beauty (“AONB”) Management Plan Review 2015 -2020 confirms most of Holy Island and the proposed onshore works lie within the AONB and the Inspector has identified the special qualities of the AONB (IR 800-801)

Seascape

36. I note the exact design and appearance of surface emergent devices within the Morlais Demonstration Zone (“MDZ”) will not be known until the Device Deployment Plan (“DDP”) for each device is submitted for approval. However, the project would introduce new tidal devices and infrastructure into open seas, and I accept the Inspector’s opinion this would be expected to cause significant visual effects on the AONB, and would fail to meet the vision for the future of the AONB, as set out in the AONB Management Plan Review 2015-2020, which seeks to preserve and enhance the unique landscape/seascape, natural beauty and special qualities of the Isle of Anglesey AONB. (IR 802-809)

Mitigation of Effects on Seascape

37. I note the applicant has included embedded mitigation measure in the scheme, in order to mitigate effects on seascape. The mitigation measures include no visually prominent devices to be placed in the northern part of the MDZ, any visually prominent devices to be placed at least 1km off shore, and floating elements would be minimised elsewhere within the subzones.

38. The Inspector notes the mitigation measures would be secured through a “Restricted Area Plan”, which is defined by article 2 of the Order. The Order also requires a DDP to be approved by the Welsh Ministers prior to the deployment of any tidal device.
39. The Inspector considers, if the Welsh Ministers were to make the Order, the Restricted Area Plan should be amended in order to clarify the type of devices, in terms of their visual prominence, which would be acceptable in the MDZ. (IR 810-822)
40. On this matter, the Inspector concludes it is not contested that there would be significant effects on seascape. However, the Inspector considers the potential significance of these effects could be reduced by amending the Restricted Area Plan. (IR 823-824)

Landscape (IR 825-841)

41. The Inspector notes it is not contested that some views in the AONB, including those of the seascape, and the AONB’s special qualities, would be significantly impacted by the works. It is the scale of impact and the weight of the impact in the overall balance which some parties dispute. (IR 825)
42. The Inspector considers the most open and undeveloped parts of the Heritage Coast lie around Holyhead Mountain to the north of South Stack. Therefore, the Inspector considers there is great weight in favour of protecting the northern MDZ area from visually prominent tidal energy devices and infrastructure. (IR 829)
43. Regarding works on land, the Inspector notes the visible elements would be concentrated. However, whilst the Inspector considers the proposed South Stack substation would be assimilated into the landscape, the application would place substantial new structures into open farmland, and works could include cable ducts and J-tubes on and over the cliff at Abraham’s Bosom. In this context, the works would increase the perception of development in this part of the AONB and would not conserve and enhance the natural beauty of the AONB. (IR 830-835)
44. The Inspector has also considered the other land-based components of the works and is satisfied they can be controlled by condition to ensure they are appropriate to their context. (IR 836)
45. The Inspector notes the applicant and LPA have agreed compensation measures to address the LPA’s concerns that the proposed onshore works could be contrary to JLDP policies. (IR 838)
46. Despite the measures identified above, the Inspector considers significant adverse effects would be caused to the AONB and the seascapes viewed from it. (IR 839)

Inspector’s conclusion on character and appearance in relation to effects on landscape

47. The Inspector considers the proposed planning conditions would address mitigation of the landscape impacts of the proposal. However, despite embedded mitigation measures, mitigation secured by planning condition, and an expected planning obligation which would secure landscape enhancement, the Inspector’s view is significant adverse impacts would occur to the AONB, its special qualities and this section of the Heritage Coast. Despite this impact, with the proposed mitigation measures, the Inspector is satisfied the harm would not be unacceptable and

therefore, there would be no conflict with JLDP policies AMG 1, AMG 3 and AMG 4. (IR 840 – 841)

48. I note the proposed mitigation measures include the Inspector's recommended modifications to the Restricted Area Plan.

The "Restricted Area – Northern"/ "The Triangle"

49. NRW has set out a case for an amendment to figure 4-5 in Volume II Chapter 4 of the ES, which shows restricted areas limiting the type of devices for deployment in the MDZ. The amendment sought by NRW would secure a triangular shaped extension to the "restricted area – northern", as defined in article 2 of the Order. NRW considers this triangular extension ("The Triangle") would ensure visually prominent surface-emergent devices are located further away from the views experienced from South Stack and its vicinity.
50. The Inspector acknowledges the evidence presented indicates The Triangle has some of the best tidal energy resource. However, the Inspector is satisfied the tidal energy resource in the area could still be captured by devices that are not visually prominent. The Inspector is convinced by NRW's case for inclusion of The Triangle. In the overall conclusions on character and appearance, the Inspector considers the Restricted Area Plan, defined in article 2 of the Order, should be modified to include The Triangle. The Inspector also considers amendments to the Legend text should be made in order to clarify the restrictions that would apply in the MDZ. (IR 843 - 847)
51. The Inspector notes the proposed works would introduce new devices and infrastructure in open seas which would be expected to cause significant effects on the AONB through a reduction in the expansiveness of views/seascape to the south and west of South Stack. The Inspector considers the amendments to the Restricted Area Plan, in addition to the other mitigation measures proposed, would mean the works would comply with relevant policies in the JLDP. (IR 847)
52. I am satisfied the Inspector's report takes account of the relevant guidance in PPW, regarding the need to give great weight to conserving and enhancing the natural beauty of AONBs. I also note the duty under section 85(1) of the Countryside and Rights of Way Act 2000 to have regard to the purpose of conserving and enhancing the natural beauty of AONBs.

Possible Effects on the Historic Environment

53. The Inspector notes Cadw has identified a permanent minor to moderate adverse impact on the settings of the Grade II listed buildings known as 5284 South Stack Lighthouse, 5713 Ellin's Tower, and 20081 Tan-y-Cytiau. A permanent minor adverse impact on the settings of scheduled ancient monuments at AN011 Trefignath Burial Chamber, AN012 Ty-Mawr Standing Stone, AN016 Holyhead Mountain Hut Circles and AN017 Penrhosfeilw Standing Stones is also identified. However, Cadw note none of these impacts would be significant. (IR 848)
54. The Inspector notes the minor to moderate adverse impacts on the settings of the heritage assets means these settings would fail to be preserved. These impacts can be expected to persist for the duration of the project. However, the Inspector was not presented with any evidence, which would demonstrate significant adverse impacts on heritage assets would be likely to result from the proposed works. (IR 849-852)

55. I am satisfied that ultimately, the historic and architectural significance of the listed buildings will not be harmed and am content with the Inspector's consideration and conclusions on this issue and am content the Inspector has considered the relevant policy framework in PPW and the statutory duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Possible Effects on Socio-economic Matters

56. I am satisfied the Inspector has considered the proposal's potential socio-economic impacts, including offshore recreational amenity, tourism and the rest of the economy. On this matter, the Inspector concludes no likely impacts from the works on tourism, marine related businesses or recreational amenity have been shown to be unacceptable, monitoring and mitigation has been planned in, and the works might add to the tourism offer on the island. (IR 853-866) I am content with these conclusions.

Skills, employment and new industries

57. I agree job creation would be one of the socio-economic benefits of the proposed works. (IR 867-868)

Decarbonising to provide an energy mix

58. I agree the proposal would assist the diversification of Anglesey's economy, with socio-economic benefits resulting from the diversification and decarbonisation of energy supply in North West Wales. These benefits have policy support from WNMP, FW, PPW and strategic policies in the JLDP. (IR 869 – 871)

Possible Effects on Marine Matters/Navigation

Oceanography

59. I am satisfied the Inspector has considered the possible impact of the works on the strength and nature of existing tidal flows in concluding there is no evidence to indicate sediment transport would be expected to change significantly due to the proposed works. (IR 873-874)

Navigation

60. I note Trinity House withdrew its objection to the proposal prior to the opening of the inquiry. (IR 876)
61. In discussing the scheme's potential impact on navigation, the Inspector notes the Order provides for a DDP and Updated Navigational Risk Assessment ("UNRA"), as defined in the Order, to be submitted to the Welsh Ministers prior to deployment of tidal devices. I agree with the Inspector that provisions in the Order will provide control over the potential impacts of device deployment on navigational boating. (IR 875-879)

The Navigation Risk Assessment ("NRA") and its Addendum ("NRAA")

62. I note and accept the Inspector has no evidence to demonstrate the survey information provided in the NRA and NRAA fails to accord with the relevant guidance relating to safety of navigation. (IR 880 – 884)

Searoom

63. The Inspector notes agreement has not been reached regarding the amount of searoom in the eastern inshore channel for certain sea users. However, I agree the Order, through the approval of DDP prior to the deployment of surface emergent devices, provides a means of controlling the number of surface emergent devices, their locations and the channel widths/searooms around them. (IR 885-892)

Marine Licensing

64. I am satisfied the offshore works would be subject to the controls of a marine licence under the MCAA. (IR 893-895)

Conclusions on marine matters/navigation

65. The Inspector notes the MDZ would introduce works, which would increase navigational risk. However, the Inspector states it has not been shown, given the nature of the works and the mitigation which can be expected to result from approval under requirements of the marine licence and Order, that the risks to navigational safety would be unacceptably harmful to sea users. (IR 896 - 897)
66. The request from the Royal Yachting Association for submerged devices only in the MDZ is acknowledged by the Inspector. However, the Inspector is satisfied possible risks from the presence of surface emergent devices have been found to be acceptable and further control is provided by the DDP process. (IR 898)
67. I accept the Inspector's conclusions on this matter.

Biodiversity

Benthic and intertidal habitats

68. I am satisfied the Inspector has considered this matter and note the Outline Marine Biodiversity Enhancement Strategy ("OMBES") has been agreed with NRW, and impact on benthic ecology would not be reason to refuse the application. (IR 899 – 904)

Marine mammals

69. The Inspector notes the MDZ would lie within the North Anglesey Marine/Gogledd Môn Forol Special Area of Conservation, which is designated for the protection of harbour porpoise. I note the proposed works could have an impact on this species, which is listed in Annex II and IV of the Habitats Directive (92/43/EEC), and other marine mammals. I note the conservation objectives for the SAC, as summarised in the IR. (IR 905)
70. Regarding the conservation objectives for the SAC, NRW had concerns in relation to marine mammals colliding with the works and disturbance caused by underwater noise. (IR 906)

Noise

71. Following amendments to the Outline Environmental Mitigation and Monitoring Plan ("OEMMP") NRW advised the Inspector an adverse effect on site integrity due to

underwater noise can be ruled out at this stage. The Inspector has no reason to disagree with NRW's advice. (IR 907-908)

Collision Risk

72. The Inspector notes whilst NRW stated further detail will be required when the Environmental Mitigation and Monitoring Plan ("EMMP") is submitted for approval prior to commencement of tidal works, it has confirmed strengthening the adaptive management proposals within the OEMMP ensures there would not be an adverse effect on the integrity of the SAC due to marine mammals colliding with the works. The Inspector has no reason to take a different view. (IR 909 – 912)
73. I am satisfied with the Inspector's conclusions, regarding marine mammals.

Fish

74. I note concerns, regarding the possible impacts of underwater noise on fish and their movements have been resolved. (IR 913)

Ornithology

75. The Inspector states the Royal Society for the Protection of Birds ("RSPB") notes its principal concerns relate to the possible impact of the works on the guillemot and razorbill populations of South Stack and Penlas. Although neither species are identified as an interest feature of the Holy Island Coast Site of Special Scientific Interest ("SSSI"), they are part of the breeding seabird colony that contributes to the SSSI and, therefore, should be maintained. As wild birds, the guillemot and razorbill populations are provided with protection under the Wildlife and Countryside Act 1981. (IR 914 - 916)
76. The Inspector notes the parties agree the proposed Phase One works would not have a significant effect on the guillemot and razorbill populations. (IR 917)
77. I note RSPB objects to the scale of the project proposed as tidal technology is in its infancy and there is a corresponding lack of empirical data to inform and/or validate the assessment of likely interactions with, and impacts on, diving birds, with the assessment of collision risk also in its infancy. It also objects due to the magnitude of potential impacts on bird populations from a 240MW deployment as assessed and reported in the Environmental Statement ("ES") – although RSPB acknowledges and accepts those reported significant effects do not take account of the mitigation proposed through phasing and the EMMP. The lack of detail in each phase, the reliance on monitoring, management and/or mitigation, and the extent to which such matters are left for determination at a later stage through a separate consenting regime are also points of objection. (IR 531, 918 - 919)
78. RSPB considers uncertainties with the project mean the scale of development is too large and potential impacts too significant. It considers a smaller scheme would allow the technology, monitoring and mitigation methods to be assessed before seeking consent for a larger project. RSPB also questions whether the project would proceed beyond its indicative first phase and if a properly informed view can be reached by the decision maker on whether public benefits associated with the project would outweigh adverse impacts or other harms associated with the project. (IR 532 - 534)
79. I am satisfied the Inspector has considered all the matters raised by RSPB. I note tidal technology is in its infancy. However, I accept the phased approach to the project,

which would enable the scheme to increase generating capacity as the technology and associated mitigation and monitoring measures are proven to be appropriate and effective. (IR 920-921)

80. I am satisfied the Inspector has considered and addressed concerns relating to assessment work and modelling. I also note RSPB accepts the proposed Phase One deployment would not have a significant impact on guillemot and razorbill populations. I agree the suitability of any further deployments would be considered in their own right, informed by the EMMP. (IR 922 – 929)
81. I am content with the Project Design Envelope (“PDE”) or Rochdale Envelope approach to the project, and the phased project deployment, as controlled by provisions in the Order. (IR 930 – 932) I note the project is limited by the project parameters defined in the Order.
82. Regarding monitoring and the EMMP, given the nature of the project, I am satisfied with the adaptive monitoring and management approach and I note the use of adaptive management in demonstration zones is supported by the WNMP. I have no reason to disagree with the Inspector’s view that the monitoring challenges are unlikely to be insurmountable. (IR 933 – 939)
83. I accept the phased approach to the project, with adaptive monitoring and management within a PDE means there are some data gaps relating to details of device deployment in particular phases. However, I agree the application is supported by extensive information on the possible environmental impacts of the works and the details that remain to be provided are those which would reasonably be expected in a proposal of this nature. I am satisfied the PDE approach has assessed the worst case environmental parameters and sufficient environmental information has been provided to reach an informed decision on the project. (IR 940-945)
84. I accept the Inspector’s conclusions on this matter and am satisfied provisions in the Order will control the project through mitigations and checks to ensure power generation is only extended when it would be appropriate to do so. (IR 946 – 949)

Terrestrial Ecology

85. The Inspector notes the Glannau Ynys Gybi / Holy Island Coast SAC / Special Protection Area (“SPA”) and SSSI includes land where the export cables would come ashore if Horizontal Directional Drilling (“HDD”) could not be used. The above ground (over the cliff) route for all or some of the nine export cables, the fallback position, would cause the export cables to cross Annex I vegetated cliff habitat within the SAC designation. (IR 950)
86. The Inspector accepts NRW’s opinion that the fallback position would have an adverse effect on the integrity of the Holy Island Coast SAC for the purposes of the Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”). As there would be an adverse effect on site integrity (“AEOSI”), regulation 64 of the Habitats Regulations is engaged. (IR 951-973)
87. The Inspector is satisfied the requirements of regulation 64(1) are met and there are imperative reasons of overriding public interest for allowing the project to proceed. The Inspector is satisfied there are no alternative solutions to the cliff cable route fallback position. (IR 974-975)

88. The Inspector notes regulation 68 requires, for cases where a project is agreed to notwithstanding AEOSI, necessary compensatory measures. Although not submitted to the inquiry for this purpose, the Inspector notes the applicant confirmed, following a finding of AEOSI, the Outline Habitat Enhancement Plan is to be considered necessary compensation for the purposes of regulation 68. The Inspector is satisfied with this position and notes the compensatory measures would be secured by planning condition. (IR 976)
89. I am satisfied the Welsh Government's duty under section 6 of the Environment (Wales) Act 2016 to seek to maintain and enhance biodiversity has been addressed.

Appropriate Assessment

90. Appendix 3 of the IR provides a summary of the Habitats Regulations Assessment and Appropriate Assessment ("AA").
91. Regarding offshore works, the MDZ would lie within the North Anglesey Marine/Gogledd Môn Forol SAC. As a result, the proposed works could have an impact on harbour porpoise (*phocoena phocoena*), which is listed in Annex II and Annex IV of the Habitats Directive, and other marine mammals. The Inspector is satisfied neither noise nor collision risk were found to be likely to result in AEOSI in relation to the North Anglesey Marine/Gogledd Môn Forol SAC. (IR Appendix 3, para. 21 - 22)
92. Regarding the Glannau Aberdaron and Ynys Enlli /Aberdaron Coast and Bardsey Island SPA and the Sgomer, Sgogwm a Moroedd Penfro / Skomer, Skokholm and the Seas off Pembrokeshire SPA, there would be no impact on populations of Manx shearwater. (IR Appendix 3, para. 23)
93. In terms of onshore works, with reference to the Glannau Ynys Gybi/Holy Island Coast SPA, the Inspector notes no possible impact on chough has been shown to be significant. (IR Appendix 3, para. 24)
94. The AA notes no direct effects would be expected on a protected site from the onshore works as proposed, using HDD to bring the export cables ashore to the South Stack substation, however, the fall-back position that would route the export cables over the cliff face would have direct effects on the Glannau Ynys Gybi/Holy Island Coast SPA/SAC. The AA then addresses the AEOSI and the requirements of regulations 64 and 68 of the Habitats Directive. (IR Appendix 3, paras 26-33)
95. The AA has been subject to consultation with NRW under regulation 63(3) of the Habitats Regulations. NRW notes it is content with the summary of the AA, subject to detailed comments.
96. Regarding the proposal's impact on marine mammals and associated SACs, NRW notes the summary AA does not make reference to cumulative impacts and in combination effects, and barrier effects. However, NRW notes its closing statement during the inquiry, when considering the potential impacts on the marine mammal features of Welsh SACs (by way of underwater noise disturbance and/or barrier effects), confirmed it is 'able to advise the decision maker that there would be no such adverse effect.' NRW notes this conclusion is based upon the commitments given in the Outline EMMP.
97. In terms of marine ornithology and associated SPAs, NRW is content with the AA's

conclusions in terms of marine ornithology. It notes the Grassholm SPA has not been screened in to the AA, however it is satisfied the site would not be adversely affected by the proposal. I accept NRW's comment, regarding the Glannau Aberdaron and Ynys Enlli /Aberdaron Coast and Bardsey Island SPA and the Sgomer, Sgogwm a Moroedd Penfro / Skomer, Skokholm and the Seas off Pembrokeshire SPA, that there would be "no adverse effect" on populations of Manx shearwater, rather than "no impact".

98. I agree with the Inspector the fallback position in terms of routeing the cabling over the vegetated cliff habitat of the Holy Island Coast SAC would result in AEOSI, even taking account of mitigation measures. However, I am satisfied in accordance with regulation 64(1) of the Habitats Regulations there are no alternative solutions and the project must be carried out for imperative reasons of overriding public interest ("IROPI").
99. The Inspector considers alternatives to the fallback position in IR 974. I have considered the submissions detailed at IR 974 and IR 166 and am satisfied there are no feasible alternative solutions that would be less damaging or avoid damage to the site.
100. Regarding whether the works are supported by IROPI I am convinced the reasons are imperative, in the public interest and override the identified risk of harm to the integrity of the Holy Island SAC, as identified in the AA. Wales is facing a climate emergency, there is need to deliver a low carbon economy and make a decisive shift away from fossil fuel. The MDZ would help develop a tidal stream energy sector which would provide an additional source of reliable, predictable, renewable energy whilst assisting decarbonisation of the energy sector. The WNMP supports the use of demonstration zones and the tidal stream demonstration zone off west Anglesey is identified in the WNMP as providing a good opportunity for developers to deploy, refine and demonstrate technologies before expanding projects into wider commercial scale resource areas. The project would result in long-term public benefits that extend beyond the local area. I consider the above reasons and those outlined by the Inspector in IR 975 demonstrate IROPI for the purposes of regulation 64(1) of the Habitats Regulations.
101. I am satisfied the requirements of regulation 64(1) are met.
102. When a project is agreed to be in accordance with regulation 64 notwithstanding a negative assessment of the implications for a European site, regulation 68 requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of the national site network is protected. In this case the appropriate authority is the Welsh Ministers.
103. Regarding regulation 68, the Inspector notes that following a finding of AEOSI the applicant confirmed the measures detailed in the Outline Habitat Enhancement Plan ("OHEP") are to be considered necessary compensation for the purposes of regulation 68. The Inspector notes the measures in the OHEP have been agreed with NRW and NRW has confirmed it considers the compensatory measures outlined in the document to be "necessary" for the purposes of regulation 68.
104. Detailed compensatory measures based on the principles set out in the OHEP will be required to be submitted to and approved by the LPA before any development takes place. The detailed compensatory measures would be secured by planning condition, as recommended by the Inspector. The LPA would be responsible for enforcing the compensatory measures. Implementation of the compensatory measures would be in accordance with timescales to be agreed with the LPA.

105. I am content the compensatory measures detailed in the OHEP, which would be secured by planning condition, satisfy the requirements of regulation 68 of the Habitats Regulations.
106. Subject to the above comments from NRW, I accept and adopt the findings of the Inspector's summary HRA/AA and am satisfied the relevant requirements of the Habitats Regulations have been addressed.

Other Matters

107. I am content the effects of the works on traffic, transport and travel, construction noise, any potential contaminated land issues, and any impact on air quality can be controlled by planning condition. (IR 979 – 981, 983).
108. I am satisfied no unacceptable impacts have been identified in relation to electromagnetic radiation. (IR 984)

Water Quality and Water Framework Directive (“WFD”)

109. I note the applicant's WFD Compliance Assessment Addendum concludes whilst impacts are predicted for key indicators of WFD water body status for Caernarfon Bay North waterbody, these were found to be small in magnitude and spatial extent and do not pose a risk of deterioration to the “Good” status of this water body. I also note the applicant's Statement of Common Ground with NRW confirms NRW agrees the risk of impacts from the proposed project on WFD receptors has been assessed in accordance with requirements of the WFD and agrees with the conclusion that the proposal will not cause deterioration in status of any WFD waterbody, nor jeopardise any water body from achieving the targets set out under the WFD. (IR 982)
110. I am satisfied the Welsh Ministers' duties under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 to secure compliance with the requirements of the WFD have been met.

Funding and Financial Viability

111. I accept the Inspector's findings that funding details have been provided by the applicant and whilst final funding decisions would be expected after the making the Order, it is very likely funding would continue to be available for the scheme, and funding would be sufficient to deliver the project and the acquisition of land and rights sought. (IR 985 – 986, IR 1038 – 1040)

Alternatives

112. I note this matter is addressed in the consideration of issues relating to the Habitats Regulations. However, I am satisfied the applicant has satisfactorily addressed alternatives in relation to Regulation 64 of the Habitats Regulations. (IR 987 - 988)

Consultation and the adequacy of the Environmental Statement (“ES”)

113. I note the applicant has confirmed all legal requirements have been met in preparing the application, the ES and consulting on it. I am satisfied the ES meets the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and also, the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. (IR 989 – 993)

114. I am satisfied the environmental information provided in the ES and the Further Environmental Information is sufficient to enable the environmental impacts of the scheme to be assessed. I confirm I have complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA relating to the consideration of the ES.

The Order

115. The Inspector notes his understanding is there are no outstanding objections to the drafting of the Order, apart from those relating to Compulsory Acquisition. (IR 994 - 995)

Planning Obligations

116. I agree the draft unexecuted legal agreement between the applicant and LPA, designed to help offset the seascape and landscape impacts, cannot be taken into account in the determination of the Order. However, I am satisfied the necessary compensation measures agreed between the applicant and the LPA could be delivered through recommended condition 22 as set out in Appendix 1 of the IR. However, I note the comments of the LPA in response to my letter of 22 October and I address condition 22 further below.

Deemed Planning Permission and Planning Conditions

117. Appendix 1 of the IR sets out the Inspector's recommended conditions to be attached to the deemed planning permission.

118. My letter of 22 October explained I removed the first paragraph of condition 2 as it is unnecessary and the Town and Country Planning Act 1990 contains provisions to deal with amendments to planning permissions. I have not included recommended condition 12 as I consider it unnecessary as the required information regarding protected species has been submitted and the impact on protected species has been taken into account through the ES and the decision making process.

119. Following my letter of 22 October the applicant submitted further suggested changes to the conditions, which it states, have been agreed with NRW and the LPA. The LPA submitted the same list of amended conditions and NRW confirmed it agrees with the proposed amendments to conditions relating to landscape and habitat compensation.

120. I have considered the proposed amendments to the conditions and am satisfied the controls sought by the conditions appended to the letter of 22 October are unaffected and, subject to minor amendments, the proposed revisions to the conditions satisfy the relevant tests in Welsh Government Circular 016/2014 "The Use of Planning Conditions for Development Management"

121. The amendments to the conditions are described below.

122. Condition 11 in the 'minded to' letter refers to the provision of habitat compensation in the event that export cables are installed up the cliff face. The proposed amendment to condition 11 (now numbered condition 12) reflects the fact that compensation due to the export cables resulting in an adverse effect on the integrity of the Holy Island Coast Special Area of Conservation will only be required if the cabling is routed up the cliff face.

123. For similar reasons, the reference to biodiversity enhancement measures at Abraham's Bosom in condition 7 (now numbered condition 8) has been removed and has been incorporated into condition 5 (now numbered condition 6) to ensure any updated landscape management plan, required in the event that cables are routed up the cliff face, takes account of the scheme for habitat compensation secured through condition 12.
124. New condition 3 is a phasing condition and enables a phasing plan to be submitted to and approved by the LPA before development takes place. This is to facilitate a phased approach to the project and to ensure necessary details are discharged for particular phases. There are minor amendments to conditions 11 and 13 in order to facilitate phased discharge.
125. Condition 22 (now numbered condition 23) has been amended, in response to comments from the LPA, in order to clarify the scope of the landscape compensation scheme required to be submitted and approved before any development takes place.
126. The amendments to conditions 15, 16, 18 – 21 (now numbered conditions 16, 17 and 19 - 22) remove references to timescales for the submission of details to the LPA. The details must still be submitted to the LPA prior to the commencement of development and, therefore, the control exercised by the conditions remains.
127. The conditions attached to the deemed planning permission for the scheme are set out in Annex A of this letter.

Planning Balance

128. The Inspector sets out the planning balance in IR 1008-1011. In terms of matters weighing against the scheme, I agree there would be significant impacts on the character and appearance of the locality, the settings of a number of heritage assets would fail to be preserved, and the natural beauty of the AONB would be diminished. I note PPW requires great weight to be given to conserving and enhancing the natural beauty of AONBs. The Inspector considers there may be some depletion of wildlife within and around the MDZ, however, if this depletion was to occur it has not been shown to be unacceptable and must be balanced with the benefits of the scheme.
129. Regarding matters weighing in favour of the scheme, I agree the proposal would help combat climate change by assisting decarbonisation of energy supplies, help develop the tidal stream energy sector and supporting industries, diversify the economy of Anglesey, make it more resilient and create jobs on the Island.
130. I agree with the conclusions set out in IR 1012 – 1023 and I am satisfied the matters identified as providing support for the proposal, when weighed against the possible impacts of the works, provide a clear and convincing case for making the Order, subject to the amendments identified by the Inspector.

Compulsory Acquisition ("CA")

131. I am satisfied the Inspector has considered the relevant statutory and policy requirements applicable to the CA. Welsh Government guidance for compulsory purchase is contained in Circular 003/2019 Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version, 2020) ("Circular 003/2019"). (IR 1029 - 1030)

132. Paragraph 10 of Circular 003/2019 confirms that compulsory purchase powers may be used to acquire land, and rights over land, where a compelling case in the public interest can be demonstrated which outweighs the loss of private interests. (IR 1031)
133. I note there are two outstanding objectors to the scheme, namely, Conygar Investment Company plc/Horizon Nuclear Power Wylfa Limited, and Orthios Eco Parks (Anglesey) Limited and Orthios Power (Anglesey) Limited – collectively known as Orthios. I am content the Inspector has given due regard to the objections.

Conygar Investment Company plc/Horizon Nuclear Power Wylfa Limited

134. I note the land needed for the proposed route of the cables to the grid connection substation. I am satisfied with the Inspector's view there is no evidence the applicant's proposed cable corridor through Plot 39 would prevent the remainder of the Conygar site being brought forward for development. (IR 1041)

Orthios

135. The Inspector explains Orthios owns the land which includes the two 132kv cables that provided power to the former Anglesey Aluminium plant. The applicant seeks the acquisition of Orthios' lands in order to facilitate a connection to the 132kv cables and, therefore, onto the National Grid. (IR 1042)
136. I am satisfied the Inspector has considered and given due regard to Orthios' objections (IR 1043 – 1068). I accept the conclusion of the Inspector that the Orthios plots potentially would be critical to the delivery of the works and the benefits that would result from them, and that whilst they seek to protect their own interests on the site, in the absence of the CA proposed, the "Options" they proposed would expose the works to considerable risk, and that risk would appear to be much greater than the risk within the applicant's proposal. (IR 1073)

Conclusion on CA

137. I note the need for compulsory acquisition is described and considered at IR 1035. I accept the Inspector's findings that funding details have been provided by the applicant and whilst final funding decisions would be expected after the making the Order, it is very likely funding would continue to be available for the scheme, and funding would be sufficient to deliver the project and the acquisition of land and rights sought. (IR 1038 - 1040)
138. I am satisfied acquisition of the lands and rights referred to in the Order are necessary for the implementation of the project and the land take would be what is expected for an infrastructure project of this type. (IR 1074)
139. I am content the Inspector has addressed all the evidence regarding CA matters and I am satisfied with the reasoned conclusion that there is clearly a need and compelling case in the public interest for the CA within the Order. (IR 1075)
140. I note the applicant has provided a Unilateral Undertaking ("UU") in relation to the access road in plots 48 and 51, which addresses the use and availability of the access road to the Orthios site during construction of the proposed grid connection substation and after construction, along with, amongst other things, security and compensation. The Inspector notes Orthios has accepted the UU as providing the protective provisions which would otherwise have been sought. (IR 1066)

Overall conclusions

141. For the reasons explained in this letter, I agree with the Inspector there is a compelling case for making the MDZ Order. I am satisfied the evidence demonstrates the applicant has considered realistic alternative approaches and, regarding the European Convention on Human Rights and the Human Rights Act 1998, the benefits of the scheme would justify any interference in interests otherwise protected by Convention rights.

The WFG Act

142. The Welsh Ministers must, in accordance with the WFG Act, carry out sustainable development. In reaching my decision on the application, I have taken into account the ways of working set out at section 5(2) of the WFG Act and 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the WFG Act'. My assessment against each of the ways of working is set out below.

Looking to the long-term

143. The decision takes account of the long-term benefits of developing and trialling devices for capturing tidal energy, a renewable form of energy production, which would support the Welsh Government's decarbonisation objectives. The project would generate these benefits over a long time period, having a 30 plus year lifespan.

Taking an integrated approach

144. I have considered the impacts from the development proposal on the Welsh Government's well-being objectives, which incorporate the well-being goals set out in section 4 of the WFG Act. Where an objective is not set out, the effect of this decision is neutral.

Impact on well-being objectives

- Build a stronger, greener economy as we make maximum progress towards decarbonisation – positive effect.
- Make our cities, towns and villages even better places in which to live and work – long-term positive effect through the development of tidal energy and the subsequent reduction of carbon emissions.
- Embed our response to the climate and nature emergency in everything we do – positive effect.

Involving people/Collaborating with others

145. Within the framework of a statutory decision making process, which is governed by prescribed procedures, the application was subject to publicity and consultation, providing the opportunity for public and stakeholder engagement. Representations received through these procedures have been considered and taken into account in making a determination on this application.

Prevention

146. The decision provides the opportunity for works to commence on a consented scheme, which would develop and trial devices for capturing tidal energy, a source of renewable energy. The scheme would contribute towards decarbonising the energy sector. The development would help meet the Welsh Government's well-being objectives focussed on building a stronger, greener economy and addressing the climate and nature emergency.

147. I consider my decision accords with the sustainable development principle set out in the WFG Act. The decision does not have any negative effects on the Welsh Government's well-being objectives, however if the application was refused the benefits in terms of contributing towards building a stronger, greener economy and responding to the climate change emergency would not be secured. Therefore, I consider the decision is a reasonable step towards meeting the Welsh Government's well-being objectives.

Achieving the Order by other means

148. Section 13(2) of the TWA enables the Welsh Ministers not to make an Order where they consider any object of the Order applied for could be achieved by other means. I have considered the on and offshore elements in their entirety and conclude no other enactment within the competence of the Welsh Ministers can achieve the objects of the Order as well as CA within a single process. Accordingly, I do not intend to use powers under Section 13(2) of the TWA.

Welsh Ministers' Decision

149. Having considered all the responses to my letter of 22 October 2021, I remain of the view there is a compelling case for authorising the scheme, for the reasons given in this letter. Therefore, I have decided to make the Order, subject to the modifications described in paragraph 10 and 15 of this letter and other miscellaneous minor drafting amendments which would not affect the substance of the Order, and to direct that planning permission be granted for the development provided by the Order, subject to the conditions set out in Annex 1 to this letter.

Notice Under section 14 of the TWA

150. This letter constitutes the Welsh Ministers' notice of determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. The applicant is required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decisions

151. The circumstances in which the Welsh Ministers' decision may be challenged are set out in the note attached at Annex 2 to this letter.

Distribution

152. Copies of this letter are being sent to those who appeared at the inquiry and all persons who submitted representations to the inquiry although did not appear.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

ANNEX 1

Planning Conditions Attached to the Deemed Planning Permission

General

- 1) The development hereby permitted shall begin before the expiration of 5 years from the date that the Order comes into force.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following approved plans, unless otherwise approved under condition 7:

Drawing No. 70061106-001 Rev P01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – Site Location Plan - Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-002 Rev P01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – Indicative Site Plan - Landfall Substation - Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-003 Rev P01 – Indicative Site Plan – Transport and Works Act 1992 Morlais Demonstration Zone Order – Indicative Site Plan – Switchgear Building – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-004 Rev P01 – Transport and Works Act 1992 – Morlais Demonstration Zone Order – Indicative Site Plan – Grid Substation – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-005 Rev P01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – Existing Site Plan – Landfall Substation – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-006 Rev P01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – Existing Site Plan - Switchgear Building Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-007 Rev P01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – Existing Site Plan – Grid Substation – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-008 Rev 01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – General Arrangement – Landfall Substation – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-009 Rev 01 – Transport and Works Act 1992 Morlais Demonstration Zone Order – General Arrangement – Switchgear Building – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-010 Rev 02 – Transport and Works Act 1992 Morlais Demonstration Zone Order – General Arrangement – Grid Substation – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-011 Rev 01 – Transport and Works Act 1992 Morlais

Demonstration Zone Order – Elevations – Isle of Anglesey (Ynys Môn)

Drawing No. 70061106-012 Rev 01 – Transport and Works Act 1992 Morlais
Demonstration Zone Order – Elevations – Isle of Anglesey (Ynys Môn)

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the Order.

- 3) The details required to be submitted and approved pursuant to conditions 5, 8, 9, 10, 14 and 15 may be submitted in phases in accordance with a Phasing Plan which shall be submitted to and approved in writing by the LPA and

(a) no construction of a phase of the development shall commence unless and until the details required by conditions 5, 8, 9, 10, 14 and 15 have been approved in writing by the LPA; and

(b) the construction and operation of any such phase shall be carried out in accordance with the details as approved.

The Phasing Plan shall not be amended without the written consent of the LPA.

Reason: To ensure that the phases of the development are carried out in accordance details that are appropriate to the relevant phase.

Approval and Implementation of Construction Mitigation Plans

- 4) Prior to the commencement of any phase of the development a Code of Construction Practice (“CoCP”) for that phase shall be submitted to and approved in writing by the LPA. Any CoCP shall include:

- a) The area and works relevant to the CoCP; and,
b) Construction Method Statements relating to the phase of the development.

If relevant to the phase of the development the following will be included within the CoCP for that phase:

- c) Surface water drainage Plan
d) Construction Noise Management Plan
e) Construction Air Quality Management Plan
f) Site and Excavated Waste Management Plan
g) Habitat Reinstatement Plan
h) Onshore Invasive Species Management Plan
i) Ecological Action Plan
j) Street works details, including:
(i) the timing(s) of and anticipated date for completion of the works,
(ii) traffic management and signage proposals, and
(iii) details of reinstatement of the street including matters such as the width and extent of resurfacing and street-markings.

The construction of each phase of the development will be carried out in accordance with the relevant approved CoCP.

Reason: In order to comply with Policy ADN 3 of the Local Development Plan.

- 5) Prior to the commencement of development, a Pollution Prevention and Management Plan (“PPMP”), shall be submitted to and approved in writing by the LPA. The construction of the development will be carried out in accordance with the approved PPMP.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 19 and ADN 3 of the Local Development Plan.

- 6) No works which comprise the installation or laying of cables externally up the cliff face at the proposed landfall shall be undertaken until:
- a) A written report, produced by a suitably qualified independent engineer has been submitted to and approved by the LPA demonstrating why it is not feasible for such cables to be installed by horizontal directional drilling or other trenchless technique.
 - b) A CoCP related to the proposed external installation works in accordance with the requirements of condition 4) has been submitted to and approved in writing by the LPA; and
 - c) An updated landscape management plan related to the proposed external installation works, including additional works to the cliff top at Abraham’s Bosom if applicable, has been submitted to and approved in writing by the LPA. The updated landscape management plan shall accord with the requirements in condition 8, shall take account of the scheme for habitat compensation approved under condition 12 and have regard to any associated impacts on the special qualities of the Anglesey Area of Outstanding Natural Beauty.

The works shall be undertaken in accordance with the approved details.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 19 and ADN 3 of the Local Development Plan.

Detailed Design

- 7) Development of each structure shall not commence until, for that structure, details of the layout, scale and external appearance of the structure have been submitted to and approved in writing by the LPA.

Prior to the construction of the landfall substation, switchgear building and the grid connection substation, their external appearance and building heights above ground level will be submitted to and approved in writing by the LPA.

These elements must be within the parameters specified in Table 1 and buildings 1, 2 and 3 at the landfall substation shall be collectively no greater than 1,739m² in area.

Table 1 – Consented Onshore Building maximum dimensions

Building or Structure	Maximum Height (m)	Maximum Length (m)	Maximum width (m)
Landfall substation building 1	7	62	22.5
Landfall substation building 2	7	28	10

Landfall substation building 3	7	8	8
Switchgear Building	4	9.4	5
Grid Connection Substation	9	104	62

Construction of the buildings and structures will be undertaken in accordance with the approved design.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.

- 8) Prior to the commencement of construction of the development details of both hard and soft landscape works shall be submitted to and approved in writing by the LPA.

This shall include:

- a) Hard landscape details including boundary details, means of enclosure and hard surfacing areas including materials;
- b) Soft landscape details including planting plans, written specifications including soil depths, and cultivation associated with plant and grass establishment and schedules of plants noting species, planting sizes and proposed numbers and densities; and
- c) A final Landscape Management Plan.

The construction of the development shall be carried out in accordance with the approved landscape details.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area and comply with Policy AMG 3 of the AONB Plan and Policy PCYFF 4 of the Local Development Plan.

Water resources, flood risk and contamination

- 9) Prior to the commencement of construction a method statement to minimise the impacts of temporary watercourse crossings shall be submitted to and approved in writing by the LPA. The construction of the development shall be carried out in accordance with the approved method statement.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 19 and ADN 3 of the Local Development Plan.

- 10) Prior to the commencement of construction a hydrogeological risk assessment shall be submitted to and approved in writing by the LPA. This hydrogeological risk assessment will include a detailed risk assessment of the effects of horizontal directional drilling. The construction of the development will be carried out in accordance with the approved risk assessment.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 5 and ADN 3 of the Local Development Plan.

- 11) If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out on that particular phase of development until a remediation strategy detailing how this unsuspected contamination will be dealt with has been submitted to and approved in writing by the LPA. The remediation strategy shall be carried out as approved.

Reason: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks.

Biodiversity

- 12) Where the installation or laying of cables externally up the cliff face at the proposed landfall is to take place pursuant to condition 6 no such development shall take place until a scheme for the provision of habitat compensation has been submitted to and approved in writing by the LPA. The habitat compensation shall be provided in accordance with the approved scheme and the timescales within it.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 19 and ADN 3 of the Local Development Plan.

- 13) No trenching of cables for any phase of development will be undertaken landward of mean low water springs without a detailed installation methodology being submitted to and approved in writing by the LPA. All trenching works landward of mean low water springs will be undertaken in accordance with this approved installation methodology.

Reason: In order to comply with the high level marine objectives within the Marine Policy Statement and to minimise the impacts upon Annex I habitats stated in the Habitats Directive.

Archaeology

- 14) Prior to the commencement of development (including site clearance, topsoil strip, ground investigations or other groundworks), a Written Scheme of Investigation ("WSI") for archaeological work shall be submitted to and approved in writing by the LPA. The WSI will include:

- a) the proposed field investigation and recording methodology;
- b) the proposed post-investigation programme including;
 - (i) assessment,
 - (ii) analysis,
 - (iii) reporting,
 - (iv) publication,
 - (v) dissemination and,
 - (vi) archiving.
- c) a dated timescale for the archaeological work proposed.

The development shall be carried out in accordance with the approved WSI.

Reason: To secure an appropriate archaeological mitigation programme in accordance with Policy AT 4 of the Local Development Plan, Planning Policy Wales 10 (December 2018) and TAN24: The Historic Environment.

Traffic and Transport

- 15) Prior to the commencement of construction of the development a Construction Traffic Management Plan (“CTMP”) shall be submitted to and approved in writing by the LPA. This will include measures to safely manage construction vehicle movements to and from the construction areas and measures to maintain access to businesses and residences affected by temporary highway closure. The CTMP shall include:
- a) Proposed construction traffic management measures;
 - b) Details of how construction will be staged;
 - c) Details of proposed diversion routes and advanced signage;
 - d) Details of the measures to manage access arrangements for local residents and tourists;
 - e) Details of construction workers parking arrangements;
 - f) Details of measures to encourage sustainable travel; and
 - g) Details of measures to escort pedestrians and cyclists during the works.

The construction of the development will be carried out in accordance with the approved CTMP.

Reason: In the interest of highway safety and residential amenity.

Welsh Language

- 16) The following Welsh Language Mitigation, Optimisation and Monitoring Strategies (“WLMOMS”) shall be submitted to and approved in writing by the LPA:
- a) Prior to construction, a WLMOMS for the construction phase of the development shall be submitted to and approved in writing by the LPA; and
 - b) At least six months prior to the operation of the development, a WLMOMS for the operational phase of the development shall be submitted to and approved in writing by the LPA.

The development must be carried out and operated in accordance with the approved strategies.

Reason: To accord with Objectives SO1 of the Local Development Plan.

Tourism and Recreation

- 17) Prior to the commencement of construction of the development a Tourism and Recreation Monitoring Strategy shall be submitted to and approved in writing by the LPA. The development must be carried out in accordance with the approved strategy.

Reason: To accord with Policy ADN 3 of the Local Development Plan.

- 18) Prior to the commencement of construction of the development, proposals for a Promotion and Interpretation Strategy, shall be submitted to and approved in writing by the LPA. The development must be carried out in accordance with the approved strategy.

Reason: To accord with Objective SO14 of the Local Development Plan.

Socio-Economics

- 19) Prior to the commencement of construction of the development a Skills and Training Action Plan, shall be submitted to and approved in writing by the LPA. The development shall be carried out in accordance with the approved plan.

Reason: To accord with Objective SO11 of the Local Development Plan.

- 20) Prior to the commencement of construction of the development, proposals for the Training Task And Finish Group, shall be submitted to and approved in writing by the LPA. The development must be carried out in accordance with the approved proposals.

Reason: To accord with Objective SO11 of the Local Development Plan.

- 21) Prior to the commencement of construction of the development a Supply Chain Action Plan, shall be submitted to and approved in writing by the LPA. The development must be carried out in accordance with the approved plan.

Reason: To accord with Objective SO12 of the Local Development Plan.

- 22) Prior to the commencement of construction of the development a Strategy for the Housing of Non-Resident Workers will be submitted to and approved in writing by the LPA. The development must be carried out in accordance with the approved strategy.

Reason: To accord with Objective SO12 of the Local Plan.

- 23) No development shall take place until a scheme for the provision of landscape compensation has been submitted to and approved in writing by the LPA. The scheme shall set out appropriate measures to compensate for the impact of the development on the landscape and seascape character areas identified in chapter 24 of the Environmental Statement (Seascape, Landscape and Visual Impact Assessment Volume 1) dated July 2019 as likely to experience significant effects as a consequence of the development after mitigation (as summarised at table 24-19 of chapter 24 of the Environmental Statement). The landscape compensation shall be provided in accordance with the approved scheme and the timescales within it.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 19 and ADN 3 of the Local Development Plan.

Operations

- 24) Prior to the operation of the development, an Operational Management Plan shall be submitted to and approved in writing by the LPA. This will detail the measures to safely manage above surface project infrastructure and maintenance operations on publicly accessible land. It shall include:

- a) Details of measures to prevent unsafe public access to above ground infrastructure
- b) Details of the maintenance measures that are likely to be required and their approximate duration and timings
- c) Details of measures to reduce as far as practical interference with public access and details of how public safety during the maintenance operations will be maintained
- d) Details of how advance notice of the maintenance operations will be communicated to the Local Planning Authority
- e) Details of how emergency maintenance measures will be managed.

Reason: In the interests of public safety

Decommissioning

- 25) Within three months of the cessation of the commercial operations of the Morlais offshore tidal project, and at least six months prior to any onshore decommissioning works commencing, a written scheme of decommissioning must be submitted to and approved in writing by the LPA. The written scheme of decommissioning shall include a Code of Construction Practice (CoCP) and the approved scheme must be implemented as approved in the carrying out of any decommissioning works or relevant part of it.

Reason: In order to protect the natural environment and comply with Strategic Policies PS 5 and ADN 3 of the Local Development Plan

Notes attached to the deemed planning permission

- 1) Where any works affects, requires access to, or contains the crossing of a trunk road, the applicant will be required to:
 - Obtain a relevant licence or authorisation to undertake those works under the Highways Act 1980; and
 - Comply with the relevant requirements in the Design Manual for Roads and Bridges.

In such instances, the applicant is advised to contact the Welsh Government's Highways Division to discuss submission requirements.

ANNEX 2

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of a TWA Order may challenge its validity, or the validity of any provision in it, on the ground that :

- it is not within the powers of the TWA, or
- any requirements imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of determination is published in the London Gazette as required by section 14(1)(b) of the TWA.

CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER

There is no statutory right to challenge the validity of the Welsh Ministers' direction that planning permission shall be deemed to be granted for development for which provision is included in a TWA Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

A person who thinks they may have grounds for challenging the decision to make the Order or the decision to give the direction as to deemed planning permission is advised to seek legal advice before taking any action.