



Statement of Common Ground

Unilateral Undertaking

DNS/3213662 - Upper Ogmore Wind Farm

Ref 02959-2828947

Revision History

Issue	Date	Name	Latest changes
01	26/08/2021	Chris Jackson	
02	08/09/2021	Chris Jackson	BCBC and NRW and RES comments added
03	09/09/2021	Chris Jackson	Finalised

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1 Introduction

- 1.1 This Statement of Common Ground has been prepared in response to the Planning Inspectorate letter dated 16 August 2021, which requested the following information be submitted by Friday 10 September 2021:
- A signed and completed planning obligation / Unilateral Undertaking;
 - A Statement of Common Ground outlining those matters of agreement and any matters of dispute in respect of the Planning Obligation / Unilateral Undertaking; and
 - Any representations relating to the submitted 'Schedule of Planning Conditions' (version received by the Planning Inspectorate on 28 July 2021).
- 1.2 This Statement of Common Ground sets out those areas of the completed Unilateral Undertaking which are agreed by RES and Bridgend County Borough Council (BCBC). At the time of submitting this document, no representations have been received specifically about the UU from NPTCBC however it is understood by RES that NPTCBC were not likely to have comment on the UU given that it relates to securing of works outside its administrative area and NRW's comments on the planning conditions refer to adequacy of control of land for ecological enhancement which is a matter best addressed under this SofCG relating to the UU.

2 Unilateral Undertaking

2.1 The Signed and Completed Unilateral Undertaking

- 2.1.1 The signed and completed Unilateral Undertaking (UU) is submitted to the Planning Inspectorate at the same time as this Statement of Common Ground. The UU has been signed by all the relevant parties.
- 2.1.2 The execution of the UU was initially proposed to be in counterpart, an approach that was not supported by BCBC on the basis of the advice found in paragraphs 5.4 and 5.5 of the Welsh Government Guidance on Planning Appeals on the use of Planning Obligations on appeals, dated 1st August 2018¹. The logistics of agreeing a four party document with the Council, consulting upon it and securing multi party consecutive execution against a fixed timescale has meant the possibility of counterpart execution had to be kept open as a necessary (and had it been required, exceptional) expedient. Due to the efforts of all involved, “normal” as opposed to counterpart execution has been achieved. The Inspector is being supplied a certified copy of the UU executed by all parties and accordingly BCBC’s concern on this point has been met.
- 2.1.3 In addition to the signatories of the UU, the legal content of the UU has been agreed by the solicitor for Bridgend County Borough Council (BCBC) as sufficient to protect the Council’s interests in terms of being able to ensure ecological enhancement works are carried out with the content of Schedule 1, the works to be secured, agreed to be a planning matter that the Council’s planning officers can comment upon.

2.2 Schedule 1

- 2.2.1 RES’s position is that the purpose of Schedule 1, as explained by the Inspector during Session 3 of the Hearings, is to set out a framework which commits RES and the landowners to carry out the works described in the Schedule. It is not necessary for the UU to define the detailed works to be undertaken. Should planning consent be granted for the development, the detail of the works will be clearly set out in the application to discharge Condition 24: Ecological Management Plan, at which time BCBC will have the opportunity to review the detail and agree the final content with RES before approving the application.
- 2.2.2 The description of works set out in Schedule 1 of the UU was sent to BCBC on 1 July 2021 and BCBC subsequently consulted NRW about the contents of Schedule 1. The position of BCBC has been informed by draft comments received from NRW and the Council’s Ecologists and is as follows:

¹ i.e. that as the UU are public law documents which are entered on the planning register and the local land charges register and are often copied to residents and other interested people. The planning obligation should be one single document executed by all the relevant parties. There may be exceptional circumstances where it is agreed in advance by the parties that counterparts are the only practical option. In these cases, both the Inspector and the local planning authority should be satisfied that certified copies of all of the individually signed documents have been provided (by a solicitor or other suitably legally qualified person)

- 2.2.3 Drawing 02959_RES-IMP_DR_EN_001 (Rev 5) is the only document submitted by the applicant indicating the biodiversity enhancements they propose to undertake as part of the Upper Ogmore wind farm development. The drawing sets out the nature and location of proposed biodiversity enhancement measures; these include silt/water runoff measures at various locations across the two landholdings concerned, and the fencing off of two watercourses in the east of the site for water voles. No further information has been submitted to support this drawing.
- 2.2.4 From a water vole perspective, proposals to slow the rate of water run-off and hold water back on the upland plateau could be beneficial to the species, particularly if dry habitats are currently an influential factor in their distribution in this landscape. However, it is important to recognise that changing water levels can affect water voles negatively and positively, and other factors may also be influential in their distribution (e.g. grazing pressure or other management/treatment of the vegetation).
- 2.2.5 In terms of the specific measures identified, from the perspective of reducing sediment run-off, we understand that the benefits of ditch blocking in the headwaters of the Cwm Nant Hir and Afon Garw have been established through an NRW-funded feasibility study. However we note that the ditch blocking measures have been blanket applied more widely across the landholdings to three more sites south of those identified by the NRW study, and another in the north-east of the site, north of the A4107 draining into Mynydd Ty Isaf SSSI.
- 2.2.6 We are aware of records of water voles (from 2016) further downstream on the watercourse in the SSSI and therefore have some concerns regarding the proposals to block ditches upstream on this watercourse without the potential impacts being properly considered first. Regarding the other water courses proposed for ditch blocking we are not aware if water voles are already present, nor if the applicant has surveyed the area to find out and inform the proposals. Proposals to block ditches to manage sediment and water run-off will need to give consideration to the presence of water voles. If water voles are present, enhancement measures will need to be carefully implemented, monitored and managed to ensure that benefits to the species are realised. A water vole conservation licence may also be required.
- 2.2.7 Regarding the proposals to fence off the two watercourses in the north-east of the site where water voles were recorded in surveys for the wind farm, we advise that the aim should be to manage the vegetation to benefit water voles, ensuring that it neither gets too overgrazed or is allowed to become too long and dense. Any areas proposed to be fenced should include gates so that stock access can be managed.
- 2.2.8 Therefore, whilst BCBC and NRW are broadly supportive of measures to enhance the site for water voles, we advocate that the choice and implementation of such measures must be properly considered through a feasibility study which has considered the potential benefits that might be gained from the proposed enhancement measures against their potential impacts. Further that the implementation of such measures is agreed with the LPA prior to works commencing on the ground, and their implementation is tied to an on-going requirement to monitor their effectiveness, and a commitment to undertake any remedial works identified as required by the monitoring.

- 2.2.9 Accordingly, we consider that it would be inappropriate to include Drawing 02959_RESIMP_DR_EN_001 (Rev 5) entitled 'Upper Ogmore Wind Farm. Biodiversity Enhancement' as one of the consented documents and drawings (condition 2 on the planning permission). Rather we advise changes to condition 24 (Ecological Management Plan) to include provision for assessing the feasibility of biodiversity enhancement measures for water voles and agree the measures to be implemented with the LPA, including a final version of Drawing 02959_RES-IMP_DR_EN_001 (Rev 5), prior to works commencing on the ground.
- 2.2.10 The revised wording for condition 24 is set out in Statement of Common Ground relating to Planning Conditions.
- 2.2.11 For the purposes of the UU, Schedule 1 to the agreement is acceptable to BCBC in that it secures for the Council adequate control over the areas where ecological enhancement works are proposed to ensure those works are assessed for feasibility prior to being approved and then capable of enforcement after approval.
- 2.3 The position of RES is that:
- 2.3.1 The ecological impact assessment completed as part of the Environmental Statement concludes that the effects of the wind farm development on biodiversity will be very limited. A district level significant effect on kestrel is predicted, with all other ecological impacts being of site level significance or less.
- 2.3.2 The locations of the biodiversity enhancement works described in Schedule 1 of the UU (and shown on drawing number 02959-RES-IMP-DR-EN-001) include areas of proposed water management measures west of Turbine T1, which have been subject to feasibility assessment by NRW. Those areas will benefit water vole and a range of other priority species and increase the resilience of local populations.
- 2.3.3 The kestrel nest boxing scheme south of the planning application boundary (still within land under RES' control) will allow birds to take advantage of areas of enhanced habitat including those further away from the wind farm.
- 2.3.4 These proposed works will deliver a clear net benefit to biodiversity, reflecting the principles of Planning Policy Wales and Future Wales and the requirements of the Environment Wales Act 2016.
- 2.3.5 The four indicative water management areas (see drawing umber 02959-RES-IMP-DR-EN-001) south of the planning application boundary have not yet been subject to a feasibility assessment similar to that completed by NRW, however their proximity and similar topography indicate that water management measures of the same nature could be carried out successfully, resulting in similar biodiversity gains.
- 2.3.6 Water management measures proposed will include the installation of gully blocks, channel stuffing and leaky barriers to slow water movement and re-wet upland habitats. This will also reduce scour

and siltation of watercourses and pools further down river catchments, reduce erosion of marshy grassland and bog habitats, improve habitat for water vole, breeding passerines (such as grasshopper warbler), reptiles and wetland invertebrates. Preliminary discussions with NRW have indicated they are confident these measures are deliverable and will result in biodiversity gain.

- 2.3.7 RES welcomes the fact that BCBC and NRW are supportive of the measures to enhance the site for water voles and agrees with BCBC that the content of the UU, including Schedule 1 ensures the Council has adequate control over the scope of these works and their subsequent enforcement.