

**IN THE MATTER OF THE WATER RESOURCES ACT 1991
(AS AMENDED BY THE WATER ACT 2003) AND THE
WATER ABSTRACTION (TRANSITIONAL PROVISIONS)
REGULATIONS 2017**

APPEAL BY:

RADNOR HILLS MINERAL WATER COMPANY LTD

SITE AT:

RADNOR HILLS, HEARTSEASE

**Planning And Environment Decisions Wales (PEDW)
REFERENCES: CAS-02488-V7M8Q2 & CAS-02489-V6P4R9**

**STATEMENT OF CASE OF
NATURAL RESOURCES WALES**

Glossary of terms

Abstraction	Removal of water from a source of supply (surface or groundwater).
Abstraction licence	The authorisation granted by Natural Resources Wales (the Respondent) in Wales and the Environment Agency in England to allow the removal of water from a source of supply.
Abstraction Licensing Strategy (ALS)	Document outlining the regulator's approach to water resource management at a catchment level. This document was previously known as a 'Catchment Abstraction Management Strategy' ('CAMS').
Appropriate nature conservation body (ANCB)	Advisor to the competent authority (see "competent authority" defined below). Natural Resources Wales is the appropriate nature conservation body for all National Site Network sites (previously Natura 2000 sites) in Wales. (See definition of "National Site Network" below).
Aquifer	An underground layer of permeable rock, sediment, or soil that can contain and yields water (i.e. one that supplies the water for wells, springs, etc).
Baseflow	The flow entering surface watercourses from groundwater, supporting stream flow in a catchment.
Catchment	The area specific to a river network from which precipitation (e.g. rainfall) and groundwater will collect and contribute to the flow of that network.
Common End Date (CED)	Common expiry date applied to licences granted in a particular area to allow for concurrent periodic review and any changes required to abstractions within an area to account for a change in circumstances since licences were granted.
Competent authority	The body determining whether a consent, permission or other authorisation should be given in the context of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). Natural Resources Wales exercises the competent authority role in Wales.
Diadromous fish species	Commonly referred to as migratory fish species, meaning species which migrate between freshwater and saltwater.
Groundwater	Water that is contained in underground rocks or superficial deposits.
Habitats Regulations Assessment (HRA)	An assessment of the potential impacts of 'projects' on National Site Network sites (see below).
National Site Network	Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. Amendments made in 2019 to the Habitats Regulations 2017 have created a National Site Network on land and at sea, including both the inshore and offshore marine areas in the UK.
Natura 2000	The Natura 2000 is a network of nature protection areas in the territory of the European Union. It is made up of SACs and SPAs, designated respectively under the Habitats Directive and Birds Directive. Since 2019, any reference to Natura 2000 in documents prepared by Natural Resources Wales should be taken to mean National Site Network.
Ramsar Site	A wetland of international importance under the Ramsar Convention.

Site integrity	The coherence of the ecological structure and function of a site, across its whole area, or of the habitats that enable it to sustain the habitats and/or populations of species for which the site was designated.
Site of Special Scientific Interest (SSSI)	Protected site designated under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000).
Special Area of Conservation (SAC)	Protected site designated under the Habitats Regulations.
Surface water	A general term used to describe all water features such as rivers, streams, springs, ponds and lakes.

Glossary of Acronyms

ALS	Abstraction Licensing Strategy
ANCB	Appropriate nature conservation body
AA	Appropriate assessment
CED	Common End Date
EA	Environment Agency
HRA	Habitats Regulations Assessment
LSE	Likely Significant Effect
NE	Natural England
NGR	National Grid Reference
NSN	National Site Network
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest

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1. Introduction

- 1.1 These appeals relate to the decisions of Natural Resources Wales (“NRW”) on 16 December 2022 to grant two licences to Radnor Hills Mineral Water Company Ltd (“the Appellant”) to abstract groundwater for the purposes of commercial water bottling, domestic and agricultural uses at Radnor Hills, Heartsease (“the licences”) (Licence serial numbers: WA-054-0009-0001 and WA-054-0009-0002).
- 1.2 NRW granted the licences (see Annexes 1.1 and 1.2) subject to a series of conditions controlling matters that included, amongst others, the date the licences would expire. Appended to the licences was a section of text under the heading “Additional Information” in which NRW summarised the reason for the expiry date.
- 1.3 On 13 January 2023, the Appellant submitted two appeals to Planning and Environment Decisions Wales (PEDW), challenging the licence expiry date included on the licences. PEDW accepted the appeals as valid and identified 5 June 2023 as the “start date” for the appeal process. It was agreed with PEDW and the Appellant that the appeals should be dealt with together.

2. Site and Activity

- 2.1 The Radnor Hills site is situated in Heartsease, Knighton, Powys. Water has historically been abstracted at the site for use in the production and processing of bottled mineral and spring water. According to information supplied by the Appellant, the production facility has been operational since 1985. Water is also abstracted to supply domestic properties and commercial offices located on the site. In addition, water is abstracted for general agriculture (poultry, sheep, agrochemical spraying) purposes.
- 2.2 Groundwater is abstracted from 15 boreholes (A – O) located within the site boundary. 12 boreholes (A – L) are located in Wales and are the subject of these appeals. The remaining 3 boreholes (M – O) are located in England. No appeal has been submitted regarding these abstractions. The site location and abstraction points are shown in the map below.
- 2.3 According to information supplied by the Appellant, boreholes A-F, H and I are abstracting water from bedrock (Raglan Mudstone Formation), whilst boreholes G, J, K and L (and M – O) are abstracting from superficial deposits (sand and gravel). As the bedrock and superficial deposits are considered to be two different sources of supply, the Appellant submitted two separate licence applications to NRW.
- 2.4 Abstraction points A-L are located within Wales and were the subject of licence applications submitted to NRW. However, they are also located within the cross-border catchment of the River Teme, which is managed by the Environment Agency (“EA”).

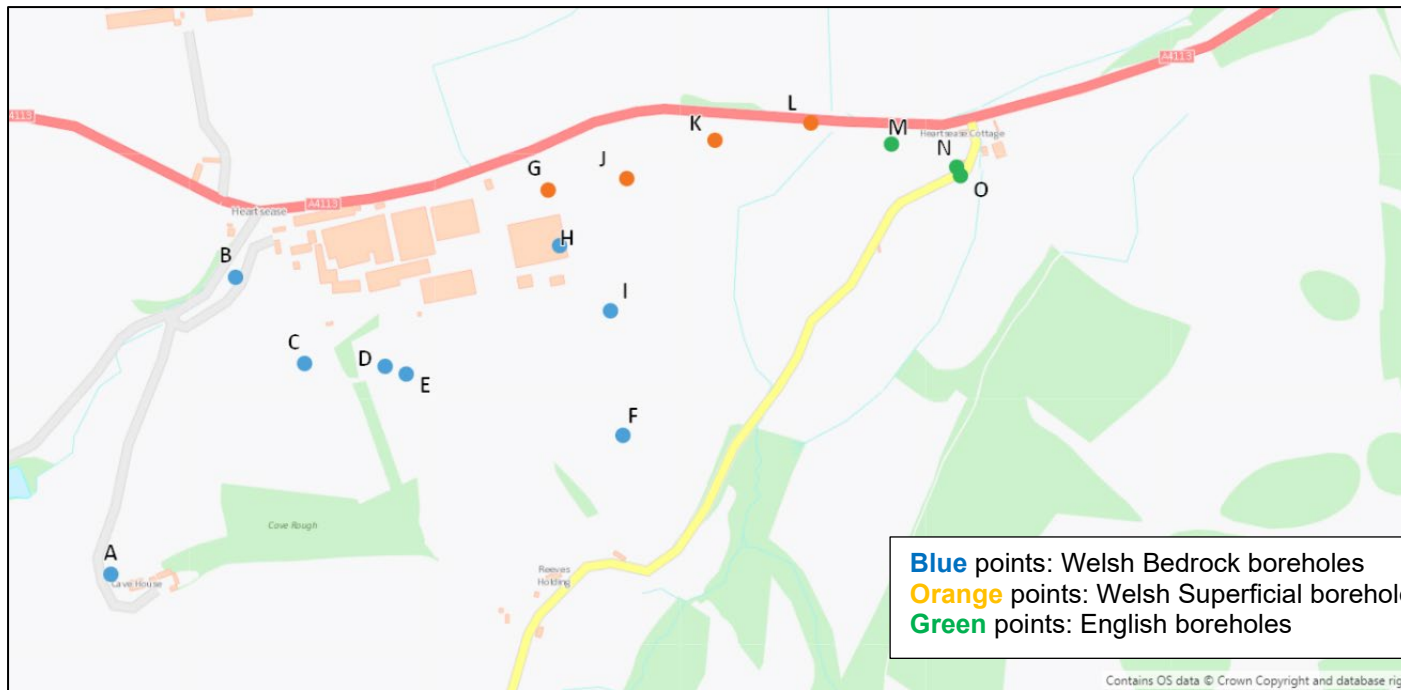


Figure 1: Map showing location of abstraction boreholes at Radnor Hills

2.5 The Appellant's abstractions were previously exempt from licensing under the Severn River Authority (Exceptions from Control) Order 1967 (see paragraph 3.2.2 below), where the requirement for a licence to abstract water (under the Water Resources Act 1963) was excepted in certain areas administered by the (former) Severn River Authority. In the vicinity of the Radnor Hills site, the boundary between the licence-required and licence-exempt areas coincided with the A4113 road. The licence-required area was to the north of the road and the licence-exempt area was to the south. The Radnor Hill abstraction boreholes are located to the south of the A4113 and so are located in a previously licence-exempt area.

2.6 The site is subject to two statutory environmental permits (references: EPR/AB3697CN and EPR/BB3298CT), which authorise the water discharges from the process and package facilities. Permit EPR/BB3298CT is subject to monitoring requirements, which are reported annually. These permits do not cover any water abstraction activity, as this is considered under different legislation (see section 3 below).

2.7 As shown in figure 2 below, the Radnor Hills site is in close proximity to the River Teme, with the nearest abstraction borehole located approximately 80m south of the river. Flows in the River Teme are understood to be influenced by groundwater flows. As a result, there are long-standing concerns regarding the potential impact of the groundwater abstraction at the Radnor Hills site on flows in the River Teme.

2.8 The River Teme has a history of drying up in the reaches between Knighton and Leintwardine; this is understood to occur most years. The natural geology and geomorphology (specifically, the thickness and high permeability of the underlying thick glacial gravel deposits) are a factor in the loss of surface water flows. Another important mechanism which leads to the complete drying out of sections of the above-ground watercourse is prolonged natural drying during low flow summer months, when

there is little to no rainfall. During these periods, water levels in the river and underlying groundwater fall below the elevation of the riverbed causing surface flow to stop. Further information is provided in the HRA and SSSI assessments provided in Annexes 13.1 and 14.1.

2.9 The River Teme is designated a Site of Special Scientific Interest (SSSI), which supports a number of features including Atlantic salmon and freshwater pearl mussel. The citation document for the River Teme SSSI is provided in Annex 2.1. In addition, the River Teme is considered to be “functionally linked” to the River Clun Special Area of Conservation (“SAC”) due to its role as a migratory route for the designated fish species and freshwater pearl mussel, and the provision of supporting habitat for these species. The citation document for the River Clun SAC is provided in Annex 2.2. The River Teme is also a significant tributary of the River Severn, which is considered functionally linked to the Severn Estuary SAC and Ramsar site for the diadromous fish species (see Glossary) which are features and sub-features of the SAC and Ramsar site. Please refer to Annex 2.3 for the Severn Estuary SAC and Ramsar core management plans.

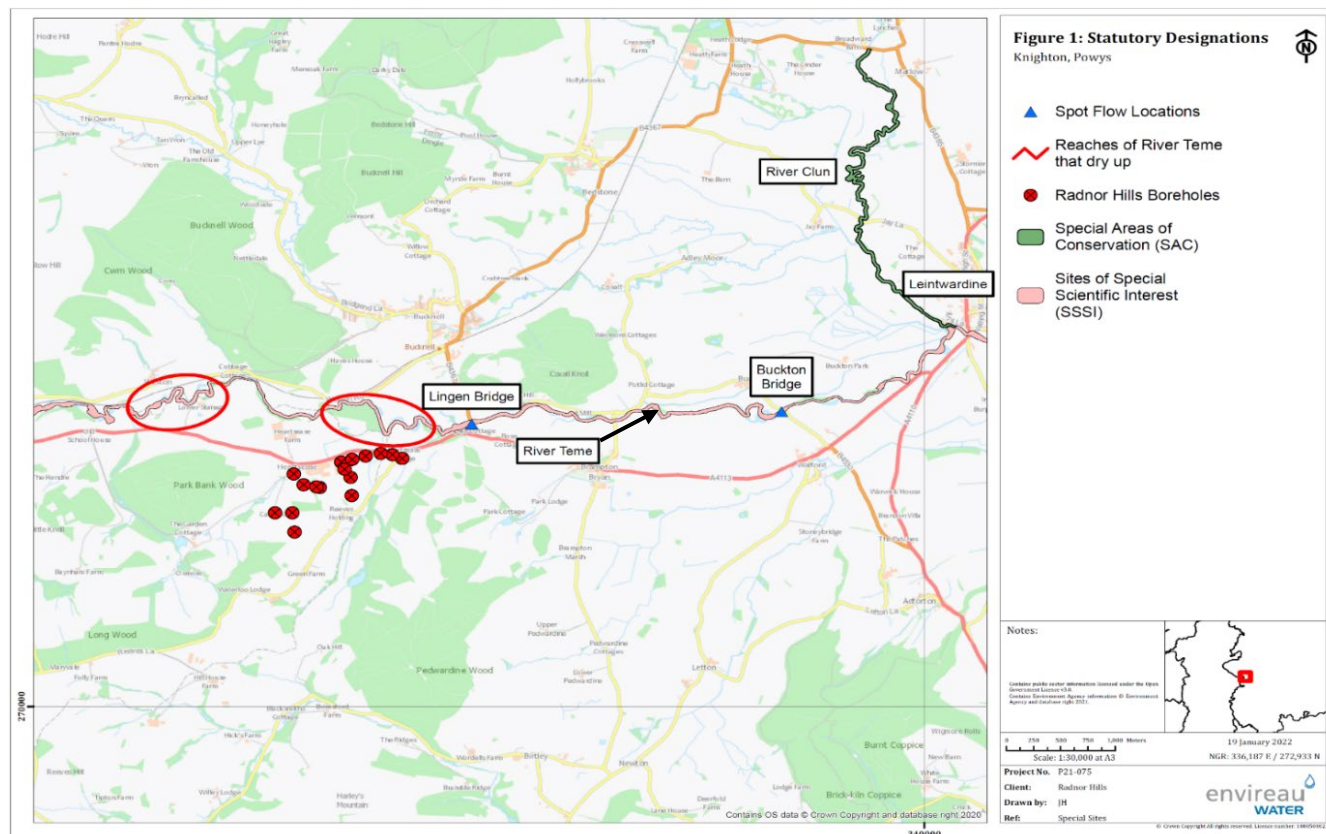


Figure 2: Map showing location of abstraction boreholes in relation to the River Teme and River Clun. The ‘Spot flow locations’ at Lingen Bridge and Buckton Bridge are the locations where river flow measurements have been undertaken.

3. Legal framework

3.1 Overview of relevant legislation

3.1.1 NRW has taken account of all relevant legislation with particular reference to the following:

- Water Resources Act 1991
- Water Framework Directive (2000/60/EC)
- Water Act 2003
- Water Abstraction (Transitional Provisions) Regulations 2017
- Environment Act 1995
- Conservation of Habitats and Species Regulations 2017
- Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000)
- Natural Resources Body for Wales (Establishment) Order 2012
- Environment (Wales) Act 2016 - Biodiversity and resilience of ecosystems duty
- Wellbeing of Future Generations (Wales) Act 2015

3.2 Water Resources Act 1991 (“the WRA 1991”)

3.2.1 Section 24 of the WRA 1991 sets out restrictions on abstracting without a licence. Any person who wishes to abstract water from any “source of supply” must do so in accordance with an abstraction licence granted under Part II of the WRA 1991. Breach of this requirement is a criminal offence.

3.2.2 As originally enacted, the WRA 1991 included a number of exemptions where an abstraction licence was not required, including abstraction from certain geographical areas that were the subject of ‘Exceptions from Control Orders’, as explained in paragraph 2.5 above.

3.2.3 Chapter II of Part II of the WRA 1991 makes provision for applications for abstraction licences. Within Chapter II, section 38(3) states that NRW “shall have regard to all the relevant circumstances” when dealing with an application for an abstraction licence including, in particular, any representations received in response to advertising and consultation, and “the requirements of the applicant, in so far as they appear to [NRW] to be reasonable requirements”.

3.2.4 Section 40(2) of the WRA 1991 requires NRW to have regard to the minimum acceptable flow in the river or watercourse from which the water is to be abstracted, taking account of the following factors set out in section 21(4) and (5) of the WRA 1991 if (as in the present case) no minimum acceptable flow has been formally determined under Chapter I of Part II of the WRA 1991:

- i. the flow of the waters from time to time;
- ii. the character of the waters and their surroundings
- iii. any relevant water quality objectives established under section 83;
- iv. the requirements amongst other things of navigation and fisheries.

- 3.2.5 Section 38(2)(a) of the WRA 1991 then empowers NRW to “grant a licence containing such provisions as [it] considers appropriate”.

3.3 Water Framework Directive (2000/60/EC) (“the WFD”)

- 3.3.1 The WFD has established a framework to protect surface waters, groundwater and coastal waters and prevent their deterioration, with the aim of achieving ‘good status’. Following the UK’s departure from the European Union, the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 continue to provide a framework for managing the water environment in England and Wales based on the framework of the WFD, even though the WFD itself no longer applies in the United Kingdom.
- 3.3.2 The WRA 1991 provides a licensing system for water abstractions, but as noted in paragraph 3.2.2 above, the WRA 1991 also granted exemptions from the need to obtain a licence in some circumstances. These exemptions meant that unlimited amounts of water could be abstracted, irrespective of its availability or the impact of the abstraction on the environment. Therefore, these exempt abstractions had the potential to prevent meeting the WFD’s aim of achieving ‘good status’.

3.4 Water Act 2003

- 3.4.1 To comply with WFD requirements, the Water Act 2003 included provisions to remove exemptions granted by the WRA 1991 and make the abstractions subject to the licensing system.
- 3.4.2 Section 19 of the 2003 Act amended section 46 of the WRA 1991 to require all licences to state the date on which they expire.

3.5 Water Abstraction (Transitional Provisions) Regulations 2017 (“the 2017 Transitional Regulations”)

- 3.5.1 Many of the exemptions from abstraction licensing granted by the WRA 1991 were removed by the Water Act 2003 with effect from 1 January 2018, pursuant to the 2017 Transitional Regulations.
- 3.5.2 The 2017 Transitional Regulations required previously exempt abstractors to apply for abstraction licences under the WRA 1991. The combined effect of regulations 3 and 4 was that where a person had abstracted water from a source of supply in the seven years prior to 1 January 2018 without the need for an abstraction licence, they needed to make an application for a licence before 31 December 2019.
- 3.5.3 The Schedule to the 2017 Transitional Regulations contained requirements for (amongst other things) making the application valid and publicising the application. In particular, paragraph 2 of the Schedule required the application to include details of the abstraction that had been undertaken in the seven years prior to 1 January 2018 (which NRW describes as “the qualifying period”); and such other information, including maps, as NRW reasonably required. The

applicant was also required to sign a declaration to state that the information in the application was true to the best of their knowledge. The information that the applicant provided on the prescribed forms, including the nature and the pattern of the abstraction, then provided the basis for drafting any licence.

- 3.5.4 Paragraph 10 of the Schedule required NRW to determine the applications within its jurisdiction by 31 December 2022, and if NRW granted a licence on terms that were different in any material respect from those of the application, the notification had to include a statement of NRW's reasons, and notify the applicant of his right to appeal (under section 43 of the WRA 1991). Finally, regulation 6 provides that the person may continue to carry out the abstraction as undertaken in the 7 years prior to 1 January 2018 until the application, or any appeal, is determined.
- 3.5.5 The 2017 Transitional Regulations do not themselves specify any substantive considerations that NRW needs to take into account when determining an application. These substantive considerations are set out in the WRA 1991.

3.6 Environment Act 1995

- 3.6.1 When determining applications NRW must comply with other legislative duties aimed at protecting the environment, including a duty contained in section 6 of the Environment Act 1995, which contains overarching provisions with respect to water. In particular, section 6(1) provides:

“It shall be the duty of an appropriate agency, to such extent as it considers desirable, generally to promote (a) the conservation and enhancement of the natural beauty and amenity of the inland and coastal waters and of the land associated with such waters; (b) the conservation of the flora and fauna which are dependent on aquatic environment; ...”

- 3.6.2 Section 56 defines “appropriate agency” to include NRW.

3.7 The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”)

- 3.7.1 The Habitats Regulations transpose the requirements of the EU Habitats and Wild Birds Directives into UK law and they continue to apply as retained law¹ following EU exit. Their provisions apply independently of any of the other domestic legal provisions mentioned above.
- 3.7.2 Natura 2000 is a network of nature protection areas in the territory of the European Union made up of Special Areas of Conservation (“SAC”) and Special Protection Areas (“SPA”), designated respectively under the Habitats Directive and Birds Directive. Following amendments to the Habitats Regulations in 2019, SACs and SPAs within the UK no longer form part of the EU's Natura 2000 ecological network. These amendments have created a

¹ Anything which, on or after exit day, continues to be, or forms part, of domestic law by virtue of the European Union (Withdrawal) Act 2018.

National Site Network (“NSN”) on land and at sea, including both the inshore and offshore marine areas in the UK.

- 3.7.3 Under regulation 63 of the Habitats Regulations, NRW, as a competent authority, must, before granting any abstraction licence, assess whether it would be likely to have a significant effect on a NSN site (SAC or SPA), either alone or in combination with other plans or projects. If the licence would be likely to have a significant effect on a NSN site, NRW must undertake an appropriate assessment (“AA”) of the implications of the abstraction upon the site in light of its conservation objectives. In light of that assessment, NRW can then only lawfully grant a licence if it is satisfied that it would not adversely affect the integrity of the NSN site².
- 3.7.4 Regulation 102(1) of the Habitats Regulations expressly applies the AA process to the grant of water abstraction licences under the WRA 1991. Accordingly, before determining this application, NRW considered whether the application would have a likely significant effect (“LSE”) on a NSN site. Where a LSE cannot be ruled out, then it is necessary to carry out an AA of the effects of the application on the site. Following completion of the AA, a licence can only be granted where the competent authority, which in this case is NRW, is satisfied that no reasonable scientific doubt remains as to the absence of adverse effects on site integrity. If it is not satisfied of this, it must refuse to grant the consent.

3.8 Wildlife and Countryside Act 1981 / Countryside and Rights of Way Act 2000 ('CRoW')

- 3.8.1 The 1981 Act, as amended by the 2000 ‘CRoW’ Act, places a duty on public bodies to protect and enhance Sites of Special Scientific Interest (SSSIs), including the need to assess whether licence applications have proposed activities that are likely to damage the features of the SSSI.

3.9 The Natural Resources Body for Wales (Establishment) Order 2012

- 3.9.1 The Order contains the following relevant provisions:

Article 4 - Purpose of the Body

4 General purpose

(1) The Body must—

- (a) pursue sustainable management of natural resources in relation to Wales, and
- (b) apply the principles of sustainable management of natural resources, in the exercise of its functions, so far as consistent with their proper exercise.

(2) In this article—

² This is subject to the provisions of Reg 64, which sets out when considerations of imperative reasons of overriding public interest (IROPI) may apply.

“principles of sustainable management of natural resources” (“egwyddorion rheoli cynaliadwy ar adnoddau naturiol”) has the meaning given by section 4 of the Environment (Wales) Act 2016;

“sustainable management of natural resources” (“rheoli cynaliadwy ar adnoddau naturiol”) has the meaning given by section 3 of the Environment (Wales) Act 2016.”

Article 5A – Nature Conservation Duties

- 1) The Body must exercise its functions so as to further nature conservation and the conservation and enhancement of natural beauty and amenity.
- 2) The duty in paragraph (1) does not apply to the Body's pollution control functions or its functions under the Forestry Act 1967.
- 3) In exercising its pollution control functions, the Body must have regard to the desirability of nature conservation and of conserving and enhancing natural beauty and amenity.
- 4) Section 1(3A) of the Forestry Act 1967 makes provision about the balance between nature conservation and other matters which the Body must endeavour to achieve in exercising its functions under that Act.

Article 5B

In exercising any function relating to nature conservation, the Body must have regard to actual or possible ecological changes.

Article 5E

In exercising its functions, the Body must have regard to—

- (a) the health and social well-being of individuals and communities;
- (b) the economic well-being of individuals, businesses and communities.

Article 8 - General duty of the Body to have regard to costs and benefits in exercising powers

- 1) In considering whether or not to exercise any power conferred upon it by or under any enactment, the Body must take into account the likely costs and benefits of the exercise or non-exercise of that power.
- 2) In deciding the manner in which to exercise any such power, the Body must take into account the likely costs and benefits of its exercise in the manner in question.
- 3) The duties in paragraphs (1) and (2) [do not apply if], or to the extent that, it is unreasonable for the Body to be subject to them in view of the nature or purpose of the power or in the circumstances of the particular case.

- 4) But those duties do not affect the Body's obligation to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it by any enactment other than this article.
- 5) For the purposes of this article, costs include costs—
 - (a) to any person; and
 - (b) to the environment

3.10 Environment (Wales) Act 2016

3.10.1 Section 6 of the Environment Wales Act 2016 requires that NRW seeks to maintain and enhance biodiversity in the exercise of its functions, and in so doing promote the resilience of ecosystems, in a manner that is consistent with the proper exercise of its functions.

3.10.2 In response to this duty, NRW has produced a document entitled “Our regulatory approach to deliver sustainable management of natural resources – Our Regulatory Principles” dated April 2016. See Annex 3.1.

3.10.3 These principles are embodied in the determination of all licence applications, namely:

- Deliver outcomes
- Be intelligent
- Prepared to challenge
- Use the full range of tools available
- Be flexible
- Bring the right skills / expertise together
- Be efficient and effective
- Be clear on what we do and why

3.11 The Well-Being of Future Generations (Wales) Act 2015 (“the WBFG Act 2015”)

3.11.1 The WBFG Act 2015 contains the following relevant provisions:

Section 2 - Sustainable development

In this Act, “sustainable development” means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle (see section 5), aimed at achieving the well-being goals (see section 4).

Section 3 - Well-being duty on public bodies

(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.

(3) A public body that exercises functions in relation to the whole of Wales may set objectives relating to Wales or any part of Wales.

(4) A public body that exercises functions in relation only to a part of Wales may set objectives relating to that part or any part of it.

Section 4 - The well-being goals

The well-being goals are listed and described in Table 1—

Goal	Description of the goal
A prosperous Wales.	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales.	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).
A healthier Wales.	A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
A more equal Wales.	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
A Wales of cohesive communities.	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language.	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales.	A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

5 The sustainable development principle

(1) In this Act, any reference to a public body doing something “in accordance with the sustainable development principle” means that the body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

(2) In order to act in that manner, a public body must take account of the following things—

- (a) the importance of balancing short term needs with the need to safeguard the ability to meet long term needs, especially where things done to meet short term needs may have detrimental long term effect;
- (b) the need to take an integrated approach, by considering how—
 - (i) the body's well-being objectives may impact upon each of the well-being goals;
 - (ii) the body's well-being objectives impact upon each other or upon other public bodies' objectives, in particular where steps taken by the body may contribute to meeting one objective but may be detrimental to meeting another;
- (c) the importance of involving other persons with an interest in achieving the well-being goals and of ensuring those persons reflect the diversity of the population of—
 - (i) Wales (where the body exercises functions in relation to the whole of Wales), or
 - (ii) the part of Wales in relation to which the body exercises functions;
- (d) how acting in collaboration with any other person (or how different parts of the body acting together) could assist the body to meet its well-being objectives, or assist another body to meet its objectives;
- (e) how deploying resources to prevent problems occurring or getting worse may contribute to meeting the body's well-being objectives, or another body's objectives.

4. Relevant policy and guidance

4.1 Previously exempt abstractions: ‘New Authorisations’

4.1.1 As outlined in section 3 above, there has been a long history to the process of dealing with previously exempt abstractions, from the introduction of the WFD in 2000 to the commencement of the 2017 Transitional Regulations in 2018.

4.1.2 Prior to the implementation of the 2017 Transitional Regulations, two public consultations were undertaken in 2009 and 2016. In October 2017, the UK and Welsh Governments published their response to the latest consultation on bringing previously exempt abstractions into the licensing system: ‘Government response to consultation on changes to water abstraction licensing exemptions in England and Wales: New Authorisations’ (“the 2017 Governmental Response”) (see Annex 4.1). In this document, abstractions that were coming into the system of licence control were referred to as ‘New Authorisations’.

4.1.3 The 2017 Governmental Response (Section 3.2) states that:

*“The UK and Welsh Governments expect the Regulator to take a **light-touch, risk based** approach to licensing these abstractions”. A light touch, risk based approach means:*

“The majority of licences will be granted based on existing abstraction requirements. Applicants should be able to demonstrate, to the reasonable satisfaction of the Regulator, their abstraction requirements and entitlements and that abstraction has taken place within the seven year qualifying period”.

4.1.4 Section 3.2 of the document goes on to state:

“The Welsh Government considers recent Welsh legislation sufficient for supporting a light touch, risk-based approach to licensing abstractions that qualify for the transitional arrangements, without making a direction to Natural Resources Wales”.

4.1.5 Section 3.2 (at footnote 24) refers to the Welsh Government’s view that the Environment (Wales) Act 2016 (see section 3.10 above) placed the sustainable management of natural resources at the core of how NRW should carry out its activities in a manner consistent with its obligations under the WBFG Act (section 3.11 above).

4.1.6 Section 3.2 of the 2017 Governmental Response also states:

“The UK and Welsh Governments’ expectations are that the Regulator will normally grant licences with a time limit to the relevant common end date in keeping with its published licensing position. Once within the licensing system, these abstractions will be treated like other licensed abstractors. While licences will be issued with time limits, it is the UK and Welsh Governments’ intention to phase out time limits as part of abstraction reform”.

- 4.1.7 Section 3.2 (at footnote 26) links to the regulator's respective webpages for Abstraction Licensing Strategies, which detail the respective time limits for each catchment. Further detail is provided in section 4.3 below.
- 4.1.8 The 2017 Governmental Response (section 3.6) states that:
*"Compensation may be applied for where loss or damage arises from a refused or constrained application for lawful abstraction that is made within the qualifying period, except where refusal or curtailment is necessary to:
[...]*
• *apply a time limit in accordance with the Regulator's current policy".*

4.2 Managing Water Abstraction

- 4.2.1 In 2001, the Environment Agency published a document entitled '*Managing Water Abstraction*' (see Annex 5.1) which explains the approach to managing abstraction in England and Wales³ and gives the context for Abstraction Licensing Strategies (ALS), which are explained in section 4.3 below.
- 4.2.2 Section 5.2 of the 2001 document states that all new abstraction licences should be time-limited, and that this policy should increasingly contribute to the sustainable management of water resources.
- 4.2.3 In May 2013 the EA published an updated version of '*Managing Water Abstraction*' (see Annex 5.2). Section 4.2 of this document focuses specifically on the time limiting of licences. It states:

"We need to recognise and respond to future uncertainties over water availability caused by climate change and increased demand. In doing this, we must manage the impact of abstraction on the environment and lawful water users. Time limiting of abstraction licences allows us the opportunity to review abstraction in the light of changing pressures.

*We time limit all new abstraction licences, and where appropriate, variations to existing licences. We aim to time limit licences within each CAMS to a common end date (CED) for that CAMS area. Most licences will be of 12 years duration. Where an application is made within six years of the CED, we will generally apply the subsequent CED to any licence granted. This is to avoid issuing shorter and shorter duration licences as the CED approaches. This means that the initial CED on a licence may be between six and 18 years duration. If a replacement licence is then applied for, the normal duration will be 12 years. **In certain circumstances, we have discretion to apply short or long time limits to a licence and this will be done on a case by case basis, following discussion between the applicant and ourselves and considering the needs of the environment.**"*

³ Prior to the formation of NRW in April 2013, abstraction management in Wales was a function of the Environment Agency.

4.3 Abstraction Licensing Strategies

- 4.3.1 Abstraction Licensing Strategies (ALS) provide a consistent and structured approach to water resource management at a catchment level, giving information on water resource availability based on environmental need and our approach to managing those resources, so that all relevant water body and conservation objectives are met.
- 4.3.2 In the case of the Radnor Hills licences issued by NRW, the abstraction points are located within Wales and so the applications were determined by NRW. However, as explained in paragraph 2.4 above the abstraction points are also located within the cross-border Teme catchment, which is managed by the Environment Agency (EA). Therefore the relevant ALS for these applications is the Teme ALS, published by the EA in February 2013 (see Annex 5.3).
- 4.3.3 The Teme ALS outlines the approach to time-limiting licences within the Teme catchment, as follows:

“In recognition of changing pressures on water resources all new licences and variations ... will have a time limit imposed. This allows for a periodic review and changes to be made to abstraction licences where circumstances have changed since the licence was granted.

All new licences within a CAMS area have a common end date (CED) so they can be reviewed at the same time. When an application is made within six years of the CED, we will generally apply the subsequent CED to any licence granted. This is to avoid issuing shorter and shorter duration licences as the CED approaches. This means that the initial CED on a licence may be between six and 18 years duration. On replacement, the normal duration will then usually be 12 years.

Where we are uncertain about the long term impacts of an abstraction we will grant a short term licence during which time potential impacts are monitored.

23% of the licences in the Teme CAMS are time-limited⁴. CEDs occur every twelve years. The next CED for the Teme CAMS is 31 March 2013 and the subsequent one is 31 March 2025”.

- 4.3.4 Due to the date the Teme ALS was published (2013) it did not include the next CED for the catchment, beyond 2025. However, in an updated version of the Teme ALS published in March 2023 (after the Appellant’s abstraction licences were issued) the next CED is given as 31 March 2037 on (see section 3.4 of Annex 5.4).
- 4.3.5 In the context of the Habitats Regulations, the Teme ALS also states that where an application could have an effect on a European designated site it may be

⁴ It is understood that the remaining 77% of licences were issued before the introduction of the time limiting policy in 2001 (see section 4.2).

necessary to set a shorter time limit to allow for the monitoring of the effect of the abstraction and change the licence if necessary.

4.4 Operational Guidance Note (OGN) 176: Determining Transitional Water Resources Licence Applications

- 4.4.1 NRW's guidance document sets out the process for determining transitional water resources licence applications for previously exempt activities (also known as 'New Authorisations' or NAs). The purpose of this guidance is to ensure that transitional licence applications are considered in a consistent manner, and our decisions are in line with the 2017 Transitional Regulations and government policy, as well as our other statutory duties: see Annex 6.1.

4.5 Operational Guidance Note (OGN) 200: Habitats Regulations Assessments of Projects

- 4.5.1 This document is about the procedures that NRW should follow when assessing the potential impacts of 'projects' on National Site Network sites: see Annex 7.1.

5.0 Case History

Please note: For ease of reading this section does not seek to set out all the pre and post-application discussions between the Appellant, NRW and other parties, but focuses on the decision-making process as it related to the issues which are relevant to the subject of this appeal.

5.1 Pre-application

- 5.1.1 In light of the licensing exemption the Appellant was operating under being removed, NRW actively engaged with the Appellant and their agent prior to the application being submitted.
- 5.1.2 On 17 April 2019, representatives from NRW attended a site meeting with the Appellant, their agents and the Environment Agency (EA). The purpose of the meeting was to clarify the requirements for a valid transitional licence application, but not to enter into discussions that would pre-empt licensing decisions.

5.2 Post-application

- 5.2.1 On 23 August 2019, the Appellant's agent submitted to NRW two applications for new transitional full abstraction licences for 12 previously exempt abstraction boreholes at the Radnor Hills site in Wales for the purposes of commercial water bottling, domestic and agricultural use. Copies of the submitted forms and additional information, submitted prior to the application being validated, are provided in Annex 8.1 to 8.2, and include:
- Application Form WRH and supporting information - Welsh Superficial Boreholes;
 - Application Form WRH and supporting information - Welsh Bedrock Boreholes.
- 5.2.2 On 23 August 2019, the Appellant's agent also submitted to the EA an application for a new transitional full abstraction licence for 3 previously exempt abstraction boreholes at the Radnor Hills site in England for the purposes of commercial water bottling and domestic use. The agent advised that the supporting information provided to NRW and EA was identical, the only differences between the packs being the application forms themselves. The application form to the EA is provided in Annex 9.1.
- 5.2.3 The licence duration section on the NRW WRH forms (Annexes 8.1 and 8.2) was left blank. However, the application form submitted to the EA (Annex 9.1) specified an end date of 31/03/2025, acknowledging that *"this is the current end date for the Teme CAMS"*.
- 5.2.4 On 28 August 2019, NRW sent an acknowledgement email to the Appellant's agent, confirming receipt of the applications and to advise that further checks

would be undertaken to ensure that all relevant application forms, supporting documents and fees had been provided.

- 5.2.5 On 6 November 2019, NRW wrote to the Appellant's agent, confirming that the application was valid.
- 5.2.6 Between August 2020 and February 2021, NRW carried out an initial screening and internal consultation exercise for all applications submitted for previously exempt abstractions. Following this the applications for the Radnor Hills abstraction boreholes were assigned a high risk and complexity score, to reflect the concerns raised regarding potential impacts of the abstraction on the River Teme SSSI (see section 2 above).
- 5.2.7 On 11 November 2021, NRW wrote to the Appellant and their agent advising that determination of the applications had now commenced. The update provided information regarding the proximity of the abstraction boreholes to the River Teme SSSI, and advised that further information may be required in order to consider potential impacts. The email correspondence is provided in Annex 10.1.
- 5.2.8 Between 11 November 2021 and 26 May 2022, NRW carried out further consultation with the EA and relevant internal teams, including the geoscience and hydrology teams and officers responsible for NRW's appropriate nature conservation body ("ANCB") function. NRW's ANCB officers raised concerns regarding the 15-year duration of any licence(s) issued should the catchment common end date of 2037 be applied (see paragraph 4.3.4 above) .
- 5.2.9 On 2 February 2022, NRW representatives attended a virtual meeting with the Appellant and their agents to discuss further assessments they had undertaken of the potential impacts of the abstraction on the River Teme SSSI and River Clun SAC. The Appellant's agent subsequently provided copies of the PowerPoint presentation and technical note to NRW, which are provided in Annexes 11.1 - 11.2. These documents were discussed with the EA during a meeting held on 9 February 2022 and reviewed by NRW's technical specialists between 15 and 21 March 2022.
- 5.2.10 On 22 March 2022, officials from NRW's permitting and ANCB functions attended a virtual meeting with the EA and Natural England ("NE") to discuss applications for New Authorisations in the Teme catchment and the need to assess the potential impacts of the abstraction on designated sites. A copy of the meeting notes is provided in Annex 12.1.
- 5.2.11 On 28 March 2022, NRW wrote to the Appellant and their agent providing an update on recent discussions with the EA and NE and advised that the next steps were to progress the HRA and SSSI assessments for consultation with the relevant ANCBs (NE and NRW). The email correspondence is provided in Annex 10.2.

- 5.2.12 On 26 May 2022, NRW representatives attended a further virtual meeting with the EA and NE to discuss New Authorisations applications in the Teme catchment and the Habitats Regulations / SSSI assessment requirements. A copy of the meeting notes is provided in Annex 12.2.
- 5.2.13 On 15 July 2022, NRW formally consulted both NE and NRW ANCB functions. This took the form of a statutory Habitats Regulations Assessment (HRA) Form for both the River Clun SAC and the Severn Estuary SAC/Ramsar site, and also an assessment (required under section 28I of Wildlife and Countryside Act 1981) for the River Teme and Severn Estuary SSSIs. The HRA and SSSI assessment concluded that any impact of the abstraction at the Radnor Hills site on flows in the River Teme would be minimal, and therefore the abstraction is unlikely to have an adverse effect on the integrity of any associated designated sites or their features. Copies of the final HRA Form 1 and SSSI assessment for the River Teme are provided in Annexes 13.1 and 14.1 respectively.
- 5.2.14 On 18 July 2022, NRW provided an update to the Appellant regarding the HRA and SSSI consultations, advising that the deadline for responses from the relevant ANCB was 15 August 2022. The email correspondence is provided in Annex 10.3.
- 5.2.15 On 2 August 2022, NRW's ANCB function for the River Teme signed off the River Teme SSSI Assessment - see section 14 of Annex 14.1.
- 5.2.16 On 8 August 2022, NRW (and the EA) received a request from NE and NRW's ANCB officials responsible for the Severn Estuary to extend the consultation deadline for the HRA and SSSI assessments from 15 August 2022 to 5 September 2022. NRW (and EA) agreed to the extension but requested to be made aware of any queries or concerns ahead of this deadline if possible.
- 5.2.17 On 16 August 2022, NRW provided a further update to the Appellant regarding the revised timescales for the HRA and SSSI consultations, and advised that an extension had been agreed until 5 September 2022. The email correspondence is provided in Annex 10.3.
- 5.2.18 Between 1 September 2022 and 19 October, detailed internal consultation took place between NRW's ANCB function for the Severn Estuary and geoscience and hydrology teams regarding both the alone and in-combination assessments carried out as part of HRA.
- 5.2.19 On 6 September 2022, NRW (and the EA) received a request from NE to further extend the deadline for the HRA consultation to 16 September 2022. NRW (and EA) agreed to the additional extension but advised that this would mean less time would be available to address any significant concerns due to the statutory timescales for determining transitional licence applications.
- 5.2.20 On 16 September 2022, NE provided a formal consultation response to NRW (and the EA). The response advised that NE did not concur with the conclusion that the plan or project will not adversely affect the integrity of the designated

sites. In addition, specific concerns were raised regarding the 15-year end date of any licence(s) issued should the catchment common end date of 2037 be applied (see paragraph 4.3.4 above), and flagged the potential for an increase in the frequency of drought events. A copy of the response is provided in Annex 12.3.

- 5.2.21 Between 21 September and 3 October 2022, NRW consulted internally and with the EA regarding the option of applying a shorter time limit on any licences issued for the Radnor Hills site. It was noted that this option was not considered appropriate mitigation under the Habitats Regulations, however it was considered an appropriate licensing option given the longer term uncertainty regarding environmental risk / impact, which had been highlighted through the SSSI and HRA consultation with relevant ANCBs. Copies of the correspondence are provided in Annexes 15.1 and 15.2.
- 5.2.22 On 22 September 2022, NRW wrote to the Appellant's agent advising that a response had now been received from NE and NRW's ANCB function and that discussions, both internally and with the EA, were ongoing regarding the issues highlighted. The email correspondence is provided in Annex 10.3.
- 5.2.23 On 4 October 2022, EA and NRW provided a joint response to NE's letter dated 16 September 2022. NE provided a response to the EA and NRW on 10 October 2022. Copies of the email correspondence, and associated attachments, are provided in Annexes 12.4 – 12.7.
- 5.2.24 On 19 October 2022, NRW's ANCB function for the Severn Estuary formally responded to the consultation, via HRA Form 2 (see Annex 13.2), advising they did not agree with the conclusion that adverse effect on site integrity for the Severn Estuary SAC and Ramsar site could be ruled out. As a result, the matter was escalated to NRW's Leadership team, in line with internal guidance and policy.
- 5.2.25 On 25 October 2022, the EA contacted the Appellant's agent, copying in NRW, advising that consideration was being given to applying a shorter time limit to the abstractions in the Teme catchment that had progressed to the Appropriate Assessment stage of the HRA, and that the date being considered was 31 March 2031. The email correspondence is provided in Annex 10.4.
- 5.2.26 On 31 October 2022, the Appellant's agent responded to the EA and NRW raising significant opposition to the proposed shorter time limit of 31 March 2031, advising that it was "*unnecessary and will have severe and significant implications for the operation of the business.*" Further detail regarding business impacts was also provided. The email correspondence is provided in Annex 10.4.
- 5.2.27 On 3 November 2022, the HRA was signed off by NRW's acting Leadership Group Manager. The HRA concluded that "*the project has been screened for likelihood of significant effects and, taking account of the advice received from protected sites advisors, is considered not likely to have a significant effect on*

any Natura 2000/Ramsar site.” A copy of the signed HRA (Form 1), which documents the escalation and sign-off process, is available at Annex 13.1.

5.2.28 On 3 November 2022, NRW confirmed to the Appellant and their agent that NRW were considering the application of a shorter time limit to any licence(s) issued, and acknowledged the points raised in the agent’s email dated 31 October 2022. The email correspondence is provided in Annex 10.4.

5.2.29 On 8 November 2022, NRW wrote to NE to provide a record of how NRW had had regard to NE’s advice (see Annex 12.8). The letter advised that:

“In response to the concerns raised in respect of the River Teme and potential for an increase in the frequency and duration of drying events, consideration is now being given to a shorter time limit than the catchment common end date of 2037...”

NRW and EA acknowledge that a shorter time limit would not be considered as appropriate mitigation under the Habs Regs. However, applying shorter time limits is considered appropriate where the environmental risk or impact is considered uncertain in the long-term (i.e. potential for increase in frequency / duration of drying events), on the basis that potential impacts are monitored”.

5.2.30 On 28 November 2022, NRW contacted the Appellant and their agent proposing a meeting to discuss the shorter time limit issue further. The email correspondence is provided in Annex 10.4. A meeting was subsequently arranged for 6 December 2022.

5.2.31 On 29 November 2022, the ‘minded to issue’ decision was confirmed by NRW’s permitting service manager, which included consideration of applying a time limit of 31 March 2031.

5.2.32 On 6 December 2022, a meeting took place between representatives from NRW and EA, the Appellant and their agent. NRW and EA confirmed that consideration was being given to applying a time limit of 31 March 2031, and that this was following the HRA and SSSI consultations with ANCB functions, which had highlighted the longer term uncertainty regarding environmental impacts and the need for further monitoring / investigation to be carried out. During the meeting, the Appellant and their agent objected to the shorter time limit on the grounds that it would be a barrier to investment in the business, which would have knock-on implications for the well-being of Radnor’s employees (specific reference was made to Well-being of Future Generations (Wales) Act 2015 in Wales). An action was agreed for NRW and EA to consider the issue further and confirm the decision in writing to the Appellant and agent in due course. A copy of the permitting officer’s notes from the meeting is provided in Annex 10.5⁵.

⁵ Meeting notes are NRW permitting officer’s own and were not shared or agreed with the Appellant.

5.2.33 On 7 December 2022, NRW's permitting team leader and policy lead were notified of the concerns raised by the Appellant in the 6 December meeting and the intention to proceed with a time limit of 31 March 2031.

5.2.34 On 8 December 2022, NRW confirmed in writing to the Appellant and their agent the decision to apply a time limit of 31 March 2031 to any licences issued in response to the Appellant's applications (see Annex 10.6). The concerns raised in the agent's email dated 31 October 2022 and meeting held on 6 December 2022 were acknowledged, and the following information regarding the time limit was provided:

"...the time limit of 2031 is within the normal 6-18 year licence duration period. As a result, it is considered to be in line with the policy position as outlined in the 2017 Government response on licensing previously exempt abstractions. As also discussed, a shorter time limit is considered justified due to the dynamic nature of the catchment and concerns raised during the consultation process regarding the potential for increased or prolonged low flow / drying events, as well as the conservation status of certain designated features. It is also considered justified in light of the limited groundwater monitoring data provided to support the application, which as discussed, covers a relatively short time period from 2017 – 2021. The shorter time limit [is] subject to further monitoring or investigation work being carried out, and we understand you are committed to working with both NRW and EA to agree a suitable monitoring plan going forward. Any data collected will be required to support any application to renew or vary the licence going forward.

From the call on Tuesday, we understand you do not agree with the above justification. As a result, we refer you to the details of the appeal process previously made available to you. Please note, appeals in Wales should now be directed to Planning and Environment Decisions Wales (PEDW), rather than the Planning Inspectorate. Further advice will be provided upon licence issue."

5.2.35 On 12 December 2022, the EA emailed the Appellant and agent, copying in NRW, confirming that they had also decided to apply the 31 March 2031 time limit to any licence issued, and advised that the justification provided in NRW's email dated 8 December 2022 also applies to the English part of the site. The email correspondence is provided in Annex 10.6.

5.2.36 On 14 December 2022, NRW's ANCB function for the Severn Estuary were notified of the 'minded to' decision to issue licences for the existing abstraction activities at the Radnor Hills site. In addition, other relevant teams were also briefed regarding the intention to issue the licences with a time limit of 31 March 2031.

5.2.37 On 16 December 2022, NRW notified NE of their intent to grant the licences to allow the continuation of the existing abstraction activities at the Radnor Hills site, without further consultation. A copy of the letter is provided in Annex 12.9.

5.2.38 Later on 16 December 2022, the Appellant's licence documents and associated decision document were finalised and sent to the permitting team leader for sign-off. A copy of the Decision Document is provided in Annex 16.1.

5.2.39 On 16 December 2022, NRW granted the Appellant's abstraction licences WA-054-0009-0002 and WA-054-0009-0002 (provided in Annexes 1.1 and 1.2) which specified expiry dates of 31 March 2031. The licences were issued to the Appellant and agent, accompanied by a supporting issue letter (see Annex 10.7). With regards to the time limit, the issue letter advised the following:

"Your abstraction licences will remain in force until 31/03/2031, in line with our policy on setting time limits. As previously advised, the time limit of 2031 is shorter than the current common end date of 2037 for the Teme catchment. However it is within the normal 6-18 year licence duration period and is considered to be in line with the policy position as outlined in the 2017 Government response on licensing previously exempt abstractions.

The shorter time limit has been applied due to the dynamic nature of the catchment and concerns raised during the consultation process regarding the potential for increased or prolonged low flow / drying events, as well as the conservation status of certain designated features. It is also considered justified in light of the limited groundwater monitoring data provided to support the application, which covers a relatively short time period from 2017 – 2021".

5.3 Post-licence issue

5.3.1 On 3 January 2023 the EA granted the Appellant's abstraction licence MD-054-0009-052, which also specified an expiry date of 31 March 2031. In the 'Reasons for Conditions' it was noted that *"The licence is time-limited in line with our policy on setting time limits, taking into account the longer term uncertainty within this part of the catchment."* Copies of the EA-issued licence, and the associated decision document, are provided in Annexes 17.1 and 17.2. It should be noted that the expiry date of 31 March 2031 was applied to a total of 5 licences issued by the EA in the Teme catchment. It should also be noted that no appeal was submitted regarding the EA-issued licence MD-054-0009-052.

5.3.2 On 4 January 2023 the Appellant's agent contacted NRW requesting a meeting to discuss the Appellant's licences. On 11 January 2023, NRW received a telephone call from the agent advising that the Appellant was considering their position in relation to the submission of an appeal against the shorter time limit applied to the licences issued in respect of the Radnor Hills site. The agent requested if NRW would be able to reconsider the decision regarding the licence duration for the above applications. On 12 January 2023 NRW responded to the agent advising that:

"... NRW are unable to reconsider the decision regarding the licence duration ... as the licences have now been issued. NRW's justification for this decision was provided in email correspondence dated 8/12/2022 and licence issue letter dated 16/12/2022.

I understand the Licence Holder is minded to appeal NRW's decision. Details of the appeals process were provided in our letter dated 16/12/2022. I would be grateful if you could keep me informed of any appeal submitted".

5.3.3 On 13 January 2023 NRW received notice of an appeal from the Appellant's solicitors. Section 7 below details the grounds of appeal. On 18 January 2023 NRW emailed the Appellant's solicitor acknowledging receipt of the email and associated documents and confirmation of access to documents provided on the solicitor's shared access website.

5.3.4 On 12 June 2023 the Appellant's solicitors contacted NRW requesting the following information relating to the determination of the Appellant's licences:

- A copy of the determination reports made in respect of the grant of the licences;
- A copy of the appropriate assessments made following the Habitats Regulations Assessments;
- Copies of any assessments or pieces of advice prepared by Natural England and provided to NRW;
- Copies of all correspondence between NRW and Natural England which relate to the application for the licences (in particular, correspondence which pertains to the concerns surrounding the increased or prolonged low flow or drying events and the conservation status of certain designated features); and
- Any other relevant report, data, representations or evidence which NRW has relied upon when determining that the length of the licences should be restricted to a shorter period than the current common end date period for the River Teme catchment.

NRW acknowledged the request on 14 June 2023, advising that a response would be provided in line with the Environmental Information Regulations 2004 ("EIR"). NRW subsequently provided the information requested on 5 July 2023.

6.0 Why the expiry date of 31 March 2031 was included

6.1 Giving licences time limits is an effective way of managing water resources, allowing regulators to deal with environmental uncertainty (such as climate change) and the changing needs for water. Such time limits contribute to the objective of safe, secure water supplies that are used efficiently to meet the needs of the public, business and the environment.

6.2 As detailed in sections 4.2 and 4.3 above, the published policy position on licence duration states that a normal licence can last anything from 6 to 18 years. Since the introduction of time limits in 2001, licences are issued with an expiry date according to the common end date (CED) stipulated within the relevant Abstraction Licensing Strategy (ALS) for the catchment (see section 4.3 above). This is unless the common end date is less than six years away, in which case the subsequent CED is usually applied. However, this principle should only be applied if we are satisfied that the abstraction is sustainable. If not, consideration should be given to applying a shorter time limit, to allow monitoring or further investigation work to be carried out.

6.3 The current CED for the Teme catchment is 31 March 2025. As this date was less than 6 years away from the determination date, it was initially assumed that the next CED (31 March 2037) should be applied to any licence(s) issued. However, the following concerns, raised during consultation, meant that both NRW and EA determined that a shorter time limit should be applied to any licence(s) issued:

- The advice from Natural England (provided in Annex 12.3) indicated that the freshwater pearl mussel populations within the River Clun SAC are in decline and that a time limit of 31 March 2037 could potentially go beyond the time that freshwater pearl mussels remain in the catchment.
- The absence of long term flow and groundwater monitoring data means that assessments were based on flow estimates and conceptual understanding. Although this information was considered sufficient to support the conclusions of the HRA and SSSI assessments in the short-term, confidence in these assessments is more limited in the longer term (further detail is provided in NRW's Decision Document provided in Annex 16.1).
- As noted in section 2 above, the Teme catchment is very dynamic and already subject to frequent low flow and drying events. Concerns were raised regarding the potential for an increase in the frequency and duration of these events, which would make the river more vulnerable to impacts of abstraction in the future. NRW refers to advice provided by Natural England, available in Annexes 12.3 – 12.7.

6.4 As also noted in paragraph 6.2 above, shorter time limits should be applied where further monitoring or investigation work is considered necessary. During the HRA / SSSI assessment consultation process, concerns were raised regarding the absence of long-term flow monitoring on the River Teme and the reliance instead on flow estimates to inform the assessments. In response, it was recognised that further monitoring would be required to better understand potential impacts going forward. For further information, NRW refers to its HRA and SSSI assessments provided in Annexes 13.1 and 14.1, and also NRW's Decision Document in Annex 16.1. In addition, the EA noted that the groundwater monitoring data provided to

support the application covered a relatively short time period from 2017 – 2021, and that more confidence was needed as to whether data collected over a longer time period would reflect the same results. NRW refers to the EA's Decision Document provided in Annex 17.2.

6.5 The current common end date of 2025 was not considered appropriate as it is too short a period to gather and assess any further data that may be required to refine the information and assessments considered when deciding the applications for the current licences. Instead, a time limit of 2031 (i.e. 2025 + 6 years) was considered more appropriate, for the following reasons:

- The Appellant has been advised to carry out further groundwater monitoring to assess potential unanticipated impacts on the River Teme. The Appellant has been advised that this data will be required to support any application to vary or renew their licences in the future, in order to satisfy the environmental sustainability requirements of any renewal application. In addition, the data can also be used to inform any wider assessments of the catchment.
- Both NRW and the EA will have gathered further abstraction returns data from all abstractions within the catchment, including those previously exempt abstractions licensed through the transitional licensing process. This will provide a better understanding of volumes abstracted and also patterns of abstraction across the year. Upon re-assessment in 2031, this increase in confidence in the available data will allow for a longer term impact assessment to be completed.
- NRW understand that in 2019 the EA installed a flow gauge on the River Teme. Currently, only river level data is available, however the gathering of data about the relationship between river level and flow (known as the “rating”) is being developed. Once sufficient gaugings have been collected, knowledge of the rating will then help with validating the accuracy of flow data in the future.
- The EA have also highlighted the potential for a new flow gauging station to be installed on the River Clun. If installed, it will allow previous flow assessments carried out by the EA (as part of their HRA assessment) to be reviewed and where necessary, refined, therefore improving confidence in the assessments. The data would also enable a longer term assessment of the catchment to be carried out. It is acknowledged that the proposal is subject to funding approval, and there is the potential for the installation to be delayed. However, advice from the EA suggests 2031 is an appropriate timescale in which to expect the additional flow data to become available.
- There are proposed Water Company Water Industry National Environment Program (WINEP) investigations within the catchment, for the period 2025 – 2030, which will provide further data/information, to inform future sustainability assessments.
- NRW understand that the EA have scheduled a number of fisheries surveys for both the Rivers Clun and Teme between now and 2031. Data from these surveys will help in providing further information on the condition of the migratory fish species populations on which the freshwater pearl mussels associated with the River Clun SAC rely.

NRW consider that the additional data and information outlined above will support further assessments to be carried out and will inform whether the licences can be renewed upon their expiry in 2031 or should be amended.

- 6.6 The decision to apply a shorter time limit was agreed in consultation with the EA, who manage the Teme catchment (see paragraph 2.4 above). The expiry date of 31 March 2031 is consistent with the time limit applied to the EA-issued licence authorising abstraction from the English boreholes. In addition, the Appellant's application to the EA indicated they were happy to accept a time limit of 31 March 2025, as it was noted that this is the common end date for the Teme catchment (see paragraph 5.2.3 above).
- 6.7 The time limit of 31 March 2031 is within the 6-18 year duration period for a normal duration licence, and is therefore considered to be in line with the published policy position on time limits, as referred to in the 2017 Government response.
- 6.8 The decision to apply a time limit of 31 March 2031 on the licences places no immediate constraint on the Appellant's ability to abstract water as they have done historically. Therefore the decision is considered supportive of NRW's general purpose of pursuing the sustainable management of natural resources in relation to Wales and applying the principles of sustainable management of natural resources.

7. Comments on the Appellant's grounds of appeal

7.1 Paragraph 25 (a) to (d): The issues raised in these sub-paragraphs were considered by NRW before granting the licences issued to the Appellant. In addition, NRW acknowledge that the activity has been occurring lawfully for a significant period of time. This is reflected by the fact that the licences do not include either 'Hands-off Flow' or monitoring conditions (as acknowledged in paragraph 10).

7.2 Paragraph 25(e): NRW do not consider the abstraction has been "curtailed" through the application of a shorter time limit. This is because the decision to apply a time limit of 31 March 2031 places no immediate constraint on the Appellant's ability to abstract water as they have done historically.

7.3 Paragraph 26: The time limit of 31 March 2031 is within the normal 6-18 year duration period for a licence, and is therefore in line with the published policy position on time limits, as referred to in the 2017 Governmental response.

7.4 Paragraphs 27-32 and 56-58: With respect to these paragraphs, NRW is satisfied that it has considered its obligations under the WBFG Act 2015 when determining the Appellant's licence applications. For further information please refer to section 2.5 of NRW's OGN 'Determining Transitional Water Resources Licence Applications' provided in Annex 6.1 and section 11 of NRW's Decision Document provided in Annex 16.1.

7.5 Section 3.11 above sets out the relevant provisions of the WBFG Act 2015.

7.6 In summary, the effect of sections 2-5 of the WBFG Act 2015 is as follows:

- (1) A public body has a duty to "carry out sustainable development" [section 3(1)]
- (2) To comply with this duty, the public body must set and publish "well-being objectives" designed to maximize its contribution to achieving the "well-being goals" set out in section 4 [section 3(2)(a)]
- (3) Having published those well-being objectives, the public body must take "all reasonable steps", in exercising its functions, to meet them [section 3(2)(b)]
- (4) Carrying out sustainable development means carrying out the process of improving the well-being of Wales in a manner which meets present needs without compromising the ability to meet future needs, with the aim of achieving the 7 well-being goals [section 2].

7.7 The Welsh Government published statutory guidance on the WBFG Act 2015 in 2016, the first part of which was entitled "Shared Purpose Shared future" (SPSF 1: Core Guidance): see Annex 18.1. Public bodies must take the guidance into account when fulfilling their legal duties. Paragraph 31 of 'SPSF 1: Core Guidance' states:

"It is fundamentally important that the requirements of the Act are not seen as 'an additional layer' to existing activity so that sustainable development is embedded into your organisation. For example, the setting of well-being objectives should be the primary way in which you set well-being objectives; it should not take place in addition to an existing process"

7.8 To comply with its legal obligations under the WBFG Act 2015, NRW published a “Well-being Statement” in 2017, identifying its seven well-being objectives and the steps it proposes to achieve them. NRW’s well-being objectives are:

- (1) Champion the Welsh environment and the sustainable management of Wales’ natural resources;
- (2) Ensure land and water in Wales is managed sustainably and in an integrated way;
- (3) Improve the resilience and quality of our ecosystems;
- (4) Reduce the risk to people and communities from environmental hazards such as flooding and pollution;
- (5) Help people live healthier and more fulfilled lives;
- (6) Promote successful and responsible business, using natural resources without damaging them;
- (7) Develop NRW into an excellent organisation, delivering first-class customer service.

7.9 NRW’s duty under the WBFG Act is to carry out sustainable development and it must take “all reasonable steps (in exercising its functions)” to meet its own defined “well-being objectives” that are designed to maximise NRW’s contribution to achieving the well-being goals of Welsh Government. The duty to carry out sustainable development under section 3(1) of the WBFG Act is not an absolute duty; it is a duty to take “reasonable steps” in the context of NRW “exercising its functions”, in this case, its abstraction licensing functions. The duty to carry out sustainable development is a duty that applies in the context of more detailed legal requirements set out in the Water Resources Act 1991, the 2017 Transitional Regulations and the Habitats Regulations.

7.10 NRW is satisfied that based on all available evidence, the short, medium and long term impacts of granting this licence subject to the time limit of 31 March 2031, will protect the resilience of ecosystems and ensure that natural resources are used in a way that does not damage them. Accordingly, it is clear that NRW has taken all reasonable steps to fulfil its published well-being objectives.

7.11 Paragraph 41: The shorter time limit of 31 March 2031 was applied to a total of 5 licences issued by the EA in the Teme catchment under the Transitional Regulations that had progressed to the Appropriate Assessment stage of the EA’s HRA. This was communicated to the Appellant’s agent by the EA in their email dated 25 October 2022 (see Annex 10.4).

7.12 Paragraphs 43-45, 49: The Appellant was notified of the expiry date to be included on the licences at the earliest opportunity following the statutory requirement to consult NE and NRW ANCB functions. As documented in section 5 above, the responses to this consultation were significantly delayed.

7.13 As per paragraph 5.2.25 above, the email dated 25 October 2022 was sent from the EA, not NRW, although NRW were copied into the correspondence. As per paragraph 5.2.28 above, it was NRW’s email dated 3 November 2022 that confirmed NRW were also considering applying a shorter time limit to any licence(s) issued. No further justification for the decision was provided at this time, however the points raised in the agent’s email dated 31 October 2022 were

acknowledged. Following this, a meeting was arranged for 6 December 2022 where officers from NRW's permitting team were able to provide justification for the shorter duration licences and the Appellant and their agent were able to further explain their concerns regarding this decision (see paragraph 5.2.32 above). On 8 December 2022, NRW provided written confirmation of its intention to apply a time limit of 31 March 2031. Further justification for this was provided, including reference to the dynamic nature of the catchment and the potential for increased or prolonged low flow / drying events, as well as the limited groundwater monitoring data provided to support the Appellant's application (see paragraph 5.2.34 above). On 12 December 2022 the EA emailed the Appellant and agent, copying in NRW, confirming that they had also decided to apply the 31 March 2031 time limit to any licence issued, and advised that the justification provided in NRW's email dated 8 December 2022 also applies to the English part of the site (see paragraph 5.2.35 above). The issue letter, dated 16 December 2022, accompanying the Appellant's licences also provided further justification for the 31 March 2031 expiry date (see Annex 10.7).

7.14 Paragraph 46: The decision to apply an expiry date of 31 March 2031 to the issued licences is reasonable, did take account of all available information and, as per paragraphs 7.4 – 7.10 above, is in line with the 2015 Act.

7.15 In addition, NRW does not consider that it has deviated from the guidance it is obliged to follow. As per paragraph 7.3 above, the time limit of 31 March 2031 is within the 6-18 year duration period for a normal duration licence, and is therefore in line with the published policy position on time limits, as referred to in the 2017 Governmental response.

7.16 Furthermore, NRW does not consider that the time limit of 31 March 2031 places "*an unjustified and restrictive limitation on the Appellant's ability to abstract water and therefore its ability to plan, invest and make any long and short term decisions*". This is for the following reasons:

- Until the determination process had been completed, the Appellant had no guarantee that permission to continue abstracting would be granted by the regulator. This period would have caused more uncertainty than the period after the transitional licences were issued, as the licences allow the Appellant to continue to abstract for the next 8 + years.
- As per paragraph 5.2.3 above, the Appellant's application to NRW did not provide any information regarding the licence duration requirements and the application to the EA indicated (provided in Annex 9.1) a time limit of 31 March 2025 would be acceptable.
- In addition, shorter time limits have been applied to other water bottling operations (which the Appellant's agent has also represented) and similar concerns have not been raised by these licence-holders.
- An expiry date has been applied to a total of 5 EA-issued licences in the Teme catchment. Again, NRW are not aware of any concerns raised from the licence-holders regarding the licence duration.

7.17 Paragraph 48(i): Significant consideration was given to the potential impacts on the River Teme and associated designations, as detailed in section 5 above and the HRA / SSSI assessment documents provided in Annexes 13.1 and 14.1.

As per paragraphs 7.3 and 7.15 above, the time limit of 31 March 2031 is within the normal 6-18 year duration period for a normal duration licence, and is therefore in line with the published policy position on time limits, as referred to in the 2017 Government response.

- 7.18 Paragraph 48(ii): NRW refer to paragraph 5.2.21 above, which demonstrates that it gave careful consideration to the application of a shorter licence duration. NRW also refer to their HRA and SSSI assessments provided in Annexes 13.1 and 14.1, as well as NRW's Decision Document provided in Annex 16.1, which demonstrate that all available information was considered during the determination of the Appellant's licence applications.
- 7.19 Paragraphs 50 – 51: The decision to apply the shorter time limit is not considered mitigation to prevent adverse impacts on the River Teme SSSI and associated designations. Rather it is considered necessary in light of the longer term uncertainty regarding the Teme catchment and the need for further data to better understand any future potential impacts.
- 7.20 Paragraph 52: NRW has given considerable weight to the natural processes which are considered to contribute to the "periodical low flow and drying up of the River Teme" within its determination of the Appellant's licence applications, specifically the HRA and SSSI assessments provided in Annexes 13.1 and 14.1. Nonetheless, the susceptibility of the River Teme to these low flow / drying events means that there is a longer term uncertainty regarding potential impacts of the abstraction on flows, which justifies the application of a shorter time limit. The Appellant suggests that within the Teme ALS it is "explicitly recognised" that the low flow and drying up of the River Teme is a "natural process". NRW do not disagree that natural processes are a factor in the low flow / drying events, but recognise that these issues may be exacerbated by human activity, including abstraction, in the longer term, hence the decision to apply a shorter time limit.
- 7.21 Paragraph 53: NRW considered all relevant data and information sources in its determination of the Appellant's licence applications, including the technical note and supporting information provided by the Appellant's agent in February 2022 (see paragraph 5.2.9 above). As per paragraph 7.19 above, the decision to apply the shorter time limit is not considered to be mitigation to prevent adverse impacts to the River Teme SSSI and associated designations.
- 7.22 Paragraph 54: NRW does not consider the longer term uncertainty regarding the Teme catchment to be 'speculative'. NRW acknowledge the lack of long term flow and rainfall data in the catchment. However, given the uncertainty regarding the potential impacts of climate change on river flows and groundwater levels, as well as the dynamic nature of the Teme catchment referred to in section 2, NRW consider the decision to apply a shorter time limit to be both reasonable and justified.
- 7.23 Paragraphs 59 – 89: NRW does not consider the Appellant's own contribution to the well-being goals to be relevant to the determination of the water resources licence applications.

7.24 Paragraph 69: The Appellant asserts it is “*an environmentally responsible company which takes its commitments to sustainable production seriously*”. NRW would highlight the following examples of recent breaches of environmental permits by the Appellant (EPR/AB3697CN and EPR/BB3298CT):

- The operator recorded and reported breaches of ammonia, suspended solids and phosphate during 2022. Further breaches of biological oxygen demand (BOD) were recorded later in the year. The operator was slow to notify NRW of the breaches via the returns process and did not inform NRW of the breaches within the required timescales (as required by Schedule 5 of their permit).
- Initially when questioned by NRW’s regulating officers, the operator was keen to investigate the accuracy of the results provided by the external accredited laboratory as the analysis did not correlate with the Operator’s in-house analysis (non-accredited). Following discussions with NRW regulating officers, it was established that the accredited laboratory was highly unlikely to be the root cause of the breaches. The Operator has conceded this point and now commenced an investigation into the reason for the breaches and potential mitigation to prevent future breaches. As a result, no enforcement action has been taken at this time.

7.25 Paragraphs 90 – 99: NRW refers to paragraphs 7.4 – 7.10 above. In addition, the issuing of a licence by the regulator does not guarantee the source of supply will produce the quantity of water authorised to be abstracted by the licence, nor that the water is fit for its intended use. The inclusion of the 31 March 2031 expiry date is intended to help ensure water is managed effectively, ensuring water supplies meet the needs of the public, business and the environment.

8. Conclusion

8.1 NRW respectfully invites the Inspector to dismiss the appeals and uphold the decision to grant the licences to abstract, subject to the expiry date of 31 March 2031, which is in line with the published licensing position, taking into account the longer term uncertainty associated with the Teme catchment.

8.2 For the reasons set out above, NRW determined the applications in accordance with relevant and applicable legislation and guidance.