

From: [PMO](#)
To: [Wylfa Newydd](#)
Subject: IACC Deadline 2 Submission : Written Representations
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Pnawn da/ *Good afternoon,*

Gweler ynglwm cynrychiolaeth CSYM mewn perthynas â'r uchod / *Please see IACC's representation in respect of the above.*

Bydd fersiwn Gymraeg yn cael ei ddarparu cyn gynted a phosib / *A Welsh version of the submission will be provided in due course.*

Cofion/ *Kind regards,*

Manon

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Mae cynnwys y neges e-bost hon yn cynrychioli sylwadau'r gyrrwr yn unig ac nid o angenrheidrwydd yn cynrychioli sylwadau Cyngor Sir Ynys Mon. Mae Cyngor Sir Ynys Mon yn cadw a diogelu ei hawliau i fonitro yr holl negeseuon e-bost trwy ei rwydweithiau mewnol ac allanol.

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Ynys Môn THE ISLE OF Anglesey

Wylfa Newydd

Written
Representation

December 2018

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1 INTRODUCTION

- 1.1 This submission comprises the Isle of Anglesey County Council's (IACC) Written Representation in relation to the application by Horizon Nuclear Power Limited (Horizon) for a Development Consent Order (DCO) for the Wylfa Newydd Nuclear New Build Project.
- 1.2 The IACC is supportive in principle of the proposal for Wylfa Newydd. Potentially it is an unprecedented opportunity to make a substantial contribution to the transformation of the economies of Anglesey and the wider North Wales region and to deliver significant investment in employment, supply chain, services and infrastructure. The project also has the potential to provide a catalyst for cultural and behavioural change, ensuring sustainable economic development, community cohesion and an improvement in the quality of life of the Island's residents. However, the IACC consider that, given the scale and complexity of the project, the Wylfa Newydd development must be the right scheme for Anglesey and subject to appropriate actions, mitigation and controls; support for the proposed development does not come at any cost.
- 1.3 Both the construction and operational phases of the proposed Wylfa Newydd Project are significant and complex with the potential to adversely affect the Island's (and the wider region's) unique built and natural environment, its communities, the Welsh language, existing infrastructure, local business and the tourism sector. The risks and likelihood of these adverse impacts are greatest for the spatial areas and communities in close proximity to the main site in North Anglesey.

2 WELSH LEGISLATIVE CONTEXT

Well-being of Future Generations (Wales) Act 2015

- 2.1 The Well-being of Future Generations (Wales) Act 2015 and the duties under it bind all public bodies making decisions within Wales. That Act places a duty on Welsh public bodies, including the IACC to carry out sustainable development¹. The Planning (Wales) Act 2015 requires that any statutory body carrying out a planning function must exercise those functions in accordance with the principles of sustainable development as set out in the Well-being of Future Generations (Wales) Act 2015 and in doing so contribute positively to the achievement of the Wales' well-being goals. As the Secretary of State will be making a planning decision on a project in Wales in determining this application, the IACC submits that the Well-being legislation should be considered to be an important and relevant matter in that determination under section 104 or 105 of the Planning Act 2008 as applicable.
- 2.2 Compliance with the Well-being Act is an important and material matter in this determination that necessitates that the Examining Authority should take account of the Act in considering the application and reporting to the

¹ A full consideration of the duties under this Act is set out in the IACC Wellbeing Assessment submitted at deadline 2 as part of the Local Impact Report and is not repeated here.

Secretary of State. In order to assist the Examining Authority in fully considering the well-being requirements and giving due regard to the Welsh legislative context, the IACC has prepared a well-being assessment which has been submitted as an annex (Annex 1D) to the Introduction Chapter of the LIR.

Environment (Wales) Act 2016

2.3 This Act places a duty on public authorities to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of their functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'. As with the Well-being Act, the IACC submits that in determining this application the Secretary of State will be making a planning decision on a project in Wales and should therefore regard the duties under the Environment (Wales) Act as an important and relevant matter in that determination under section 104 or 105 of the Planning Act 2008 as applicable.

3 LOCAL PLANNING POLICY

3.1 The Joint Local Development Plan 2011 – 2026 (JLDP) was adopted in July 2017 following public examination. The JLDP has been developed to take specific account of the Wylfa Newydd proposals. The plan includes a policy specific to the Wylfa Newydd development (PS9) The IACC has also adopted Supplementary Planning Guidance (SPG) in July 2014 to assist Horizon in developing the proposals by setting out the issues that needed to be addressed as well as Council's priorities, key concerns and aspirations for the project. This guidance was reviewed and updated in 2017 following the adoption of the JLDP, public consultation on the update was carried out in early 2018 closing on 22nd February 2018, following which further revisions were made and the revised SPG was adopted by the Council in May 2018.

3.2 The JLDP was developed with regard to the well-being goals under the Well-being of Future Generations (Wales) Act 2015 and seeks to ensure the promotion of the well-being of future generations by ensuring that the consenting of projects (and mitigation measures) is undertaken with a view to the longer term to ensure that future generations inherit positive outcomes. To do this major, nationally significant projects in the plan area, such as Wylfa, must provide benefits and opportunities throughout their entire lifecycles. The promotion of the well-being of future generations in the context of Wylfa Newydd is addressed most clearly through the concept of legacy. In the Council's opinion 'legacy' can take a number of forms, including on the ground changes or positive changes in the Island's socio-economic profile.

3.3 The concept of legacy is key to the approach taken in the JLDP and is a theme running through all aspects of the plan. The requirement to consider and deliver legacy includes project promoters designing aspects of the project so as to allow continuing or re-use post the construction phase, and

developing plans and strategies to maximise long term, intergenerational benefits.

- 3.4 The JLDP forms the main development plan document for the area within which the Wylfa Newydd proposals are located, it is a current, up-to-date plan and takes specific regard of the proposed development. It is supported by the SPG which has been reviewed and updated in response to the adoption of the JLDP and the evolution of the project proposals. The IACC therefore submits that the JLDP and SPG should be held to be important and relevant considerations under sections 104 and 105 of the Planning Act 2008 and should be given significant weight in considering and determining this application.
- 3.5 The current SPG was adopted in 2018 following revision to ensure consistency with the adopted JLDP. That revision included the undertaking of public consultation. Horizon responded to the consultation alleging that some sections of the SPG were inconsistent with each other. The IACC carefully considered each of these point and responded to each individually in finalising the SPG. The IACC notes that Horizon has stated in its application that the SPG is inconsistent with the JLDP, however, it is noted that Horizon raised no legal challenge to the adoption of the SPG on the grounds of inconsistency with the JLDP.

4 DCO: GENERAL

4.1 Article 2 Definitions: Definition of commence

The DCO excludes the following from the definition of commencement:

- (a) site preparation and clearance;
- (b) pre-construction archaeological works;
- (c) environmental surveys and monitoring;
- (d) removal of hedgerows, trees and shrubs;
- (e) investigations for the purpose of assessing ground conditions;
- (f) diversion or laying of services;
- (g) remedial work in respect of any contamination or adverse ground conditions;
- (h) receipt and erection of construction plant and equipment;
- (i) the temporary display of site notices and advertisements;
- (j) erection of temporary buildings, structures or enclosures related to any of the works listed above,

The IACC has no objection to items (b), (c), (d), (e), (f), (g), (h) and (i).

- 4.1.1 The Council has some concerns with the scope of (j). The erection of temporary buildings, while unlikely to be problematic on the main site, could be on other sites; in particular those for the offline highway works and at Dalar Hir where land is greenfield. The IACC submits that this exclusion should only apply to the main site and the erection of temporary buildings on any other site should constitute commencement.
- 4.1.2 The Council objects to the inclusion of (a) site preparation and clearance in this list of exclusions. The offline highway works sites and Dalar Hir are greenfield sites. Site preparation and clearance on these locations will require the formation of accesses and the undertaking of earthmoving works and could have a large visual impact. These works should therefore be subject to all of the pre-commencement requirements. If site preparation and clearance is retained in this list the IACC submits that it should not apply to greenfield sites.
- 4.1.3 Site preparation and clearance is not defined within the dDCO however the IACC understands this to include the main site preparation and clearance works being Work 12. If Work 12 is not included within the scope of site preparation and clearance this requires to be clarified on the face of the DCO as its potential inclusion is a matter of concern for the IACC.
- 4.1.4 IACC does not consider it to be accurate to state that work 12 replicates the site preparation and clearance works for which planning permission is being sought from the Council or that the requirements of the DCO replicate the conditions of the planning permission.
- 4.1.5 Work 12 is more extensive and impactful than the planning permission works. The Explanatory Memorandum² at 4.10 and 4.16 is therefore not accurate in stating that these works are the same. For example, Work 12 includes realignment of a watercourse which is not included within the planning permission application site preparation and clearance works. At 4.16 of the Explanatory Memorandum³ there is a reference to Work 12 being slightly larger than the planning permission application area. The planning permission area is 299 hectares, the main site is 407⁴ hectares; this cannot be reasonably characterised as 'slightly' larger.
- 4.1.6 IACC has specific concerns around the inclusion of Work 12 in this definition as this does not trigger all of the requirements of the DCO. Consideration of the requirements is set out further in section 7 of this representation.

² Revision 1: Examination Library reference APP-031, revision 2 submitted in response to s51 advice: Examination Library reference AS-011

³ Examination Library reference APP-031

⁴ The application documents variously give the Wylfa Newydd Development Site area as 407 and 409 acres, see for example the planning statement at 4.3.2 (Examination Library reference APP-406) which states it as 407 hectares, and the ES Volume A - A2 - Project overview and introduction to the developments (Examination Library reference APP-056) at 2.2.1 which states that the area is 409 hectares. The IACC has quoted a site area of 407 hectares as that is the most commonly used figure in the application documents; it would be of assistance if the figure could be clarified.

4.2 Article 2 Definitions: Definition of maintain

4.2.1 The dDCO provides that ““maintain” includes inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish, relay, extend, enlarge or replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement, or vary the authorised development as described in Schedule 1 (Authorised development), and any derivative of ““maintain” must be construed accordingly;”.

4.2.2 The words “relay, extend, enlarge” have been added to the definition in revision 2 at deadline 1⁵. The IACC objects to the width of this definition, particularly the inclusion of extend and enlarge added at revision 2. While the IACC accept the need for maintenance powers, it does not consider that extending or enlarging any structure falls within the definition of maintain. The Council is also concerned that there is a lack of information on and assessment of maintenance activities in the ES to support such a wide definition. Horizon state in the Explanatory Memorandum⁶ that the definition is appropriate to allow it to *“properly maintain and protect the authorised development throughout the 60 year operational period (for example maintenance activities will inevitably include the need to refurbish or reconstruct operational buildings or replace components of the Power Station”*.

4.2.3 The justification for this definition is therefore predicated on the Power Station but the power to maintain is not restricted to the power station. It applies to all of the elements consented by the DCO meaning that this very, wide definition applies equally to the off-site facilities, park and ride and logistics centre as well as the landscaping areas around the main site which are in close proximity to communities and designed to help screen and those communities. Horizon has set out no justification why this definition is appropriate to those areas rather than the buildings of the Power Station itself.

4.2.4 IACC questions where the extensive and apparently inevitable maintenance activities are assessed in the ES as the Council has been unable to locate a meaningful assessment of them. It is not acceptable to conclude, as Horizon appears to be seeking to do, that because the impacts will less than initial construction, they are within the scope of the ES and should be permitted. Over the life of this consent this leads to considerable uncertainty and the potential for repeated, significant and unacceptable impacts on communities. Given the life of the development the ES will also quickly become inadequate for consenting any major works and updates and addendums are likely to be necessary to comply with the objectives of the EIA regime.

⁵ Revision 2 submitted at Deadline 1; Examination Library reference REP1-038

⁶ Revision 2 submitted in response to s51 advice: Examination Library reference AS-011 at paragraph 3.4.4

- 4.2.5 Without a meaningful assessment of the maintenance activities and the identification of the impacts of those the restriction on works limiting them to those not creating new or materially different environmental effects is meaningless. If there is no assessment then there is no assessment of impact against which the activities and its effects can be judged.
- 4.2.6 The IACC is concerned that the proposed width of this definition means that almost any work could be progressed under it. There is therefore no decision point for assessing whether any proposed work remains within the scope of the environmental information provided and whether that information is still adequate to be relied upon. The IACC considers that there should be a requirement requiring the regular submission of maintenance plans for non-emergency works throughout the operational period in order to provide decision points for EIA compliance by bringing these within the scope of subsequent applications under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 4.2.7 The Council submits that in the circumstances of this project two definitions of maintain may be more appropriate; one wider definition for the Power Station, the application of which is limited to the 'nuclear island' area, and one for all other components (including the landscaping around the Power Station) which is considerably more limited and therefore provides a level of protection to residents by limiting the impacts of maintenance works.

4.3 Article 5 and the relationship with TCPA permission

- 4.3.1 The Council objects to with the drafting of Article 5 in the draft Development Consent Order. This drafting, taken together with the definition of commence set out in the dDCO will create a gap in the regulation and control of the development which is not acceptable to the IACC as planning authority. Under the proposed drafting, Horizon can, by notice, end the application of planning permission conditions (while retaining the benefit of any approvals thereunder) and commence the more extensive site preparation and clearance works authorised under the DCO. The authorised development would not however be commenced by such works under the definition given in the dDCO.
- 4.3.2 The site preparation and clearance works would be 'controlled' only by the high level certified documents and plans which do not provide the appropriate level of detail to regulate the development (see section 11 below for detailed response on the CoCPs, 7.3 on the CMS and 7.2 on the phasing strategy). These structure of these requirements means that much of the control is devolved to the CoCPs, including important elements such as working hours, control of noise and dust, lighting, delivery timings, and phasing. The draft planning permission conditions are more extensive than the DCO equivalent and cover a range of matters which are not currently set out in the dDCO requirements. The detail covered in those planning conditions is not mirrored in the CoCPs which purport to control these works.

4.3.3 There is a logical inconsistency in the drafting of the SPC requirements which provide in SPC4, SPC8, SPC9 SPC10, which provides that no part of the SPC works may commence, however for the purposes of the DCO, undertaking of the SPC works does not constitute commencement given the definition of commence in Article 2.

4.3.4 IACC object to the drafting of Article 5(1)b. This article would appear to mean that any pre-existing breach of condition would be nullified by the commencement of Work 12 but that all approvals under the planning permission would be deemed approvals under the DCO. This appears to be very one sided as Article 5 also provides that any pre-existing consents granted under the planning permission operate as consents under the DCO. In addition, given the greater scope of works in Work 12 than in the planning permission this is not considered to be appropriate as the documents and plans approved for the planning permission would not have been drafted to cover all of the activities within the more extensive Work 12.

4.4 Article 10: Defence to statutory nuisance

4.4.1 This article creates a defence to nuisance actions brought by aggrieved persons that Horizon have complied with their own plans and therefore considerably extends the defence. The IACC considers that this drafting goes further than the legislation, precedent or the usual justification for such defences. Horizon have not explained why this is necessary in the Explanatory Memorandum. There is an already wide defence to statutory nuisance actions brought by the IACC as under section 158 of the Planning Act 2008. The IACC does not object in principle to the further extension of that to actions of nuisance brought under s82(1) of the Environmental Protection Act 1990. However the Council does consider the provision set out in Article 10(1)(a)(iii) goes beyond the creation of an equivalent defence and creates an inappropriately wide defence which inappropriately reduces the legal protection available to the public. Further, the lack of detail in the submitted draft CoCP and sub-CoCPs would provide very little to no reassurance for affected persons as the control and measures relating to noise and measures relating to noise, vibration dust and lighting are high level and lack any detail (please see section for further comments on the CoCPs).

4.5 Inclusion of deemed consents and guillotine provisions

4.5.1 The IACC agrees to the inclusion of deemed consents and guillotine provisions in the following articles **subject to** the time period for any deemed consent following an application being 56 days in all cases:

- (a) Article 11 Power to alter the layout of streets
- (b) Article 12 Street works
- (c) Article 16 Temporary stopping up of streets

The IACC notes that revision 2 of the DCO has amended the period from 28 days to 56 days.

- (d) Article 18 Access to works
- 4.5.2 Article 18(2) provides that deemed consent of the “street authority” is granted if the “planning authority” does not respond within 28 days. In this case consultation is with the highways authority, applications are made to the planning authority and the deemed consent of the street authority is sought. These are all separate statutory functions under different legislation. The confusion of functions in this article is likely to cause delay in processing any application and should be simplified where possible.
- 4.5.3 The IACC agrees to the inclusion of this provision only if the period is amended to 56 days.

- (e) Article 21 Traffic regulation measures
- Article 21(2), which would allow Horizon to revoke or amend any Traffic Regulation Order not on the list set out in Schedule 10, is acceptable to IACC as Traffic Authority only if the period in Article 21(3) is extended from 28 days to 56 days. On receiving an application for such consent the Council must not only review the proposals and arrangements for traffic management related to them but also the interaction with all other works on the public highways, circulate to the relevant elected members and Community Councils for comment, bring forward any amendments which may be required to the regulation of other roads as a consequence of the proposals and liaise with the Police and other Emergency Services.

- (f) Article 75 hedgerows
- The IACC agrees to the inclusion of deemed consents under the Hedgerow regulations in Article 75 provided that the drafting is amended so that only the sections of Important Hedgerows listed in Schedule 17 can be removed and no other Important Hedgerows. .
- Article 75 (3) and (4) should be amended to be more specific. IACC request that these subsections are reworded as follows:

75 (3) The undertaker may, for the purposes of the authorised development:

- (a) subject to paragraph (2), remove any hedgerows that are not important hedgerows within the Order Limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove only those sections of the important hedgerows identified in Schedule 17 (Removal of important hedgerows) and shown on the plans identified in Schedule 17.

75 (4) The power conferred by paragraph (3) removes any obligation upon the undertaker to secure consent under the Hedgerow Regulations 1997 for those sections of the Important Hedgerows in Schedule 17 and on the plans identified in Schedule 17, but does not remove the obligation upon the undertaker to secure consent under the Hedgerow Regulations 1997 for the removal of any other sections of Important Hedgerows.

(g) Schedule 19

For the avoidance of doubt IACC does not consent to the deemed approval provisions in schedule 19, please see section 8 of this representation for comments on that schedule.

4.6 Article 36 Temporary use of land for maintaining the authorised development

4.6.1 The Council requests that an amendment is made to Article 36 to prevent its application to any operational public highway. This article allows Horizon to take possession of the land at any time during the operational period (60 years) if it is required to maintain any part of the development. Horizon's Counsel advised at the DCO hearing⁷ that this is required to allow proper maintenance of the nuclear power station. The nature of the nuclear power station is however such that the operational power station itself will not be immediately abutting a public highway, this power is accordingly not required over public highways for maintenance works to the power station. This article should therefore explicitly exclude all operational public highways from this power. Any maintenance works which require occupation of public highway should seek authorisation for such occupation from the Highway Authority in the same manner as any other works.

4.7 Article 72 Human remains

4.7.1 The IACC notes that the Order Land includes areas of greenfield land. Other developments on Anglesey have discovered previously unknown archaeological remains including settlements. The Council therefore considers that there is a realistic possibility that unknown, historic human remains may be uncovered during the works and that a process to allow Horizon to have these properly relocated is appropriate. The IACC therefore supports the inclusion of Article 72 within the DCO but would request that this is amended to provide that notices any notices served or published under this Article are required to be bi-lingual in both Welsh and English.

4.8 Article 77 Notices

4.8.1 Given the equal status of Welsh and English within Wales and the high levels of Welsh speaking on Anglesey, the IACC considers that any notices served under the DCO should be served in both Welsh and English. The

⁷ Issue Specific Hearing on the Draft Development Consent Order held on 24 October 2018

IACC accordingly requests that Article 77 is amended to require all notices to be bi-lingual.

4.9 Article 79: Procedure in relation to certain approvals etc

- 4.9.1 The IACC submits that a general limiting provision on tailpieces is required specifying that any change approved for under any part of the DCO must not give rise to new or significantly different environmental effect from those assessed in the Environmental Statement and should not allow any activity which has not been assessed to be carried on.
- 4.9.2 It is presumed that the Article 79 and Schedule 19⁸ process for approval would, by virtue of the drafting including “any agreement”, also include any tailpiece where agreement is required. These changes could be extensive.
- 4.9.3 The IACC has set out its objections to the current drafting of schedule 19 in detail at section 8 of this Representation, However in relation to tailpieces, the IACC objects to this process authorising changes to any approved plan, scheme document or details to be determined without public consultation, with payment only to a nominal fee, within a time frame which is too short to be practicable for anything other than simpler or minor changes and to be subject to deemed consent without conditions. The impacts of such changes could be considerable and the work required to assess the change could be substantial. External input from bodies such as Natural Resources Wales may be also be required and is not allowed for in the timescales.

4.10 Article 81 Amendment of local legislation

- 4.10.1 This article seeks to disapply the provisions of the Twercyn Rural District Council Foreshore Byelaw 1952. This byelaw prohibits the use of the foreshore without a licence from the Council. The IACC confirms it has no objection to this article.

5 DCO: PART 3 STREETS

5.1 Maintenance of altered streets, Articles 11 and 19

- 5.1.1 Article 11 ‘Power to alter the layout of streets’ and Article 19 ‘Construction and maintenance of altered streets’ provide that streets altered under this order, including new parts of streets, must be completed to the reasonable satisfaction of the street authority and be maintained by Horizon for 12 months. Where streets have been altered it follows that only part of the street will have been subject to works. This could result in a situation where part of the street requires to be maintained by IACC while the altered section is to be maintained by Horizon for a period of 12 months. Rather than dividing the allocation of maintenance of streets in such a manner, the approach normally taken by the Council would be that a bond for the whole cost of the alteration works is required before works are undertaken, then on satisfactory completion of the works, 10% of the bonded sum would be

⁸ Previously 18, numbering cited is per revision 2 submitted at Deadline 1, Examination Library reference REP1-005

retained for 12 months and used by the Council to undertake any required maintenance. If no maintenance is required the 10% retention would be released back to developer. IACC would request that this approach is adopted in this case allowing responsibility for the entire street to be retained by the Council but with Horizon paying for any maintenance needed on the altered sections.

- 5.1.2 The IACC accordingly seeks an amendment to the DCO provide that a deposit of funds or a Bond is to be provided prior to any works commencing to ensure that any street works are completed to a safe and acceptable standard, and to fund any necessary repairs to altered streets for 12 months after the completion of works in place of the responsibility to do so being allocated to Horizon.
- 5.1.3 The Council notes that any consents granted under Article 11 which require the consent of the Council under Article 11(4) will only be given subject to the normal conditions which ensure that works are completed to the required standard (including IACC overseeing works) and that maintenance of such streets can be undertaken effectively. The Council is therefore likely to require the provision of funds or a bond for the cost of any works which will reduce to 10% for the maintenance period. It is therefore more transparent and will promote consistency in street works for the project if all of the works are subject to the same requirements and that this is set out in the DCO.

5.2 **Art 12 Street works and Article 13 Application of the 1991 Act**

- 5.2 This article as drafted allows Horizon to undertake street works to all of the streets listed in Schedule 6 without any consent from the street authority being required. There is therefore no ability on the part of the authority to control the detail of works, the timing of works, approve traffic management, co-ordinate street works, inspect and supervise works, approve works, or apply any defects period or any liability provisions. The Council submits that, outwith the main site, this power is therefore too extensive and would mean that IACC cannot effectively and safely manage the public road network, co-ordinate roadworks as it is required to do by statute or effectively plan its own maintenance programmes. The Council requests that this power is amended to reflect the normal approach to street works under the New Roads and Street works Act 1991 which has been disapplied by article 13 and to which disapplication the Council objects. In lieu of the application of the street works regime, the Council seek as a minimum that Horizon are required to give notification of intended streetworks to the Council and North Wales Police 56 days in advance of the anticipated start date, that approval of traffic management proposals must be obtained before works can be undertaken, a right for the Council to supervise and inspect works, a requirement for bonding or financial guarantee for works commenced but not completed or not undertaken to the required standards, a defects procedure and liability period for repairing any defects and the ability for the Council in consultation with North Wales Police to prohibit the undertaking of works where it is

reasonably considered to be necessary to do so in the interests of public safety.

5.3 Article 16 Temporary stopping up

- 5.3.1 The power under this article applies to any street shown on the rights of way plans and would therefore include for example the A5025. There is no time limit on temporary stopping up. The IACC therefore seeks an amendment to this Article to ensure that alternative routes and temporary diversions along which traffic and persons are directed are approved by IACC as being fit for purpose before the temporary stopping up under article 16(4) can come into force.
- 5.3.2 There is currently no provision about the condition in which temporarily stopped up streets must be returned. Given that article 16(2) allows temporarily stopped up streets to be used as working sites, such streets could be considerably damaged. For those streets where street authority consent is required under article 16(5)(b) the condition in which such streets must be on reopening will be a condition of that consent however for the streets listed in schedule 9 there is no equivalent opportunity to apply such a condition and the IACC therefore requires that the DCO provides a mechanism for controlling this so that streets are not returned to public use in an unacceptable condition, and if that does occur Horizon are liable for the costs of repairing the street.

5.4 Article 19

- 5.4.1 Horizon originally advised in the first revision of the Explanatory Memorandum⁹ that Article 19 followed TWA model provision 10. The drafting does not however follow the model provision as key alteration has been made; the model provision reads

“10.— Construction and maintenance of new or altered streets

(1) Any street (other than specified private streets) to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.”¹⁰ (bold and underline added).

- 5.4.2 The version in the dDCO not only changes highway authority to street authority but instead of defining the private streets scoped out of the provision provides “Any street (other than public highway)…”. This results in substantial gap in control of new highways constructed under the DCO which do not have to be constructed to the satisfaction of the appropriate authority (in the case of this project that will be the highway authority) or maintained by Horizon for 12 months. Given that the project includes areas of new road which the dDCO provides will be public highway, it is

⁹ Examination Library reference APP-031 at 5.4.1. This was deleted as revision 2.

¹⁰ The Transport and Works (Model Clauses for Railways and Tramways) Order 2006, schedule 1

unacceptable to IACC as highway authority that they have been excluded from the scope of this provision.

- 5.4.3 The IACC require that it has an opportunity to supervise the works of the roads which will become public highway and inspect the construction of these as required. In order to ensure that the Highway Authority is satisfied that new roads constructed are suitable and safe for public use before they open the DCO needs to be amended to provide that no new highway can be opened unless and until the authority agrees it is suitable. In order to ensure this, no highway should be deemed to be public highway unless and until the Highway Authority has accepted in writing that it has been constructed to the required standard.
- 5.4.4 The IACC notes that it is not seeking the equivalent of the normal condition on the construction of new public highway that a bond for the full cost is put in place. As the Offline improvements form part of the mitigation package that has to be delivered as part of the project, the IACC is happy that enough control would be available to it to ensure that the road are constructed to the required standard if opening is prohibited until the condition of the road is inspected and certified in writing to be acceptable.

In line with normal practice, Horizon will be financially responsible for defects and maintenance of the new highway for 12 months following opening and the IACC requests that the article is amended to reflect that. As with Article 11 the IACC would prefer that this is approached through securing of funding for 10% of the build cost rather than Horizon undertaking works to operational highway.

- 5.4.5 Despite the production of detailed drawings Horizon have not produced or discussed with the IACC a schedule of ancillary features such as landscaped areas will be part of the public highway and which IACC will be required to maintain. IACC have therefore been unable to produce a costing for the commuted sum for maintenance which is required for these features and which is not yet secured in any document under the DCO. This requires to be agreed and the sum paid before the new highway opens to traffic.
- 5.4.6 The IACC assumes that boundary features will not be maintained by the Highway Authority. However, should this prove to be different, the IACC requests a schedule of boundary features that the Highway Authority will be required to maintain following the implementation of the improvements is produced as part of the schedule of ancillary features.
- 5.4.7 The IACC notes that requirement OH4 boundary treatment design, presupposes that all boundary treatments for the offline highway works will be fencing. The IACC considers that this is unacceptable and would not respect the local landscape character or extent boundary treatments in the area which make a lot of use of cloddiau, stone walling and hedging¹¹. The IACC request that this requirement is made less specific so that location

¹¹ Please see Wylfa Newydd Development Area Chapter of the LIR.

appropriate boundary treatments can be agreed with all references to 'fencing' being amended to 'boundary treatments'.

5.5 Article 20

5.5.1 The IACC requests that this article is expanded to include the highway authority as well as the street authority. Given the scope of the project and that construction of new public highway is included, Given that these are different statutory functions and the Highway Authority will be the appropriate function to in some cases extension of the power to enter into agreements relative to the DCO to the Highway Authority is considered to be expedient.

5.6 Article 21

5.6.1 The IACC notes that in response to a request, Horizon have (in November 2018), provided illustrative plans of proposed traffic regulation measures including new speed limits. IACC requests that the power under this article is amended to require a plan for each measure put in place under it and that the relevant traffic regulation measures plans are required to be submitted to and approved by IACC as highway authority acting in consultation with North Wales Police before any measure comes into force. This is to ensure that comprehensible, acceptable plans which align with those for all other traffic measures in the area and which can be used to support enforcement are in place and publically available before any new regulation takes effect.

5.6.2 The IACC are still reviewing the details of the proposed traffic regulation measures. At this time the IACC cannot agree to any of the powers under this article. The IACC will respond to the traffic regulation measures proposals as part of its detailed responses on highway details including the design of the offline highways sections.

6 DCO: SCHEDULE 1

6.1 Description of works, Other Associated Development,

6.1.1 All elements of other associated development should be qualified by statement to the effect of ensuring that they "do not give rise to any materially new or materially different environmental effects from those assessed as set out in the Environmental Statement."

6.1.2 The IACC are concerned as to why these provisions are so wide. IACC want to be clear what works are within the project envelope and that any consent is therefore properly controllable. Under the present drafting, the planning authority is concerned that these provisions are so wide and the scope of the consent is therefore so ill-defined that it could not realistically enforce against any unauthorised development as it would be very difficult to show many activities not covered by these provisions.

6.1.3 What may be a small or insignificant work as assessed by Horizon in the context of the overall project may however result in a large impact on

residents which could be materially different in impact on them. If an impact was already significant, then even a modest increase could be very significant in and of itself in terms of impact experienced. The Council consider that it is therefore to be important to be as specific as possible in allowing these sweeper provisions so that it can be identified what the works are, what the impacts will be and if that is considered in the ES.

7 DCO: SCHEDULE 3: REQUIREMENTS

7.1 General

- 7.1.1 This section should be read in conjunction with IACC's Local Impact Report and response to First Written Questions where further detailed comments on specific requirements are made. Those comments are not repeated here.
- 7.1.2 The IACC considers that the dDCO contains very few requirements for development of this complexity and scale being developed across multiple sites. The structure of the requirements means that development is heavily controlled by the various plans, in particular the CoCPs; comments on the CoCPs are given at section 11.

7.2 Phasing Strategy¹²

- 7.2.1 The IACC considers that the phasing strategy is a key document in controlling the impacts of the development. The Phasing Strategy at 1.1.10 states "The key purpose of this Phasing Strategy is to provide assurance as to when the key mitigation will be delivered. It ensures that development will not be able to progress until pre-requisite mitigation is delivered". Key mitigation is defined in schedule 3 of the dDCO as "Key Mitigation" means the Park and Ride facility, Logistics Centre, A5025 Off-Line Highway Improvements, Marine Off-Loading Facility, Ecological Compensation Sites, Site Campus, and drainage works and landscape mounds within the WNDA".
- 7.2.2 The IACC considers that the Phasing Strategy as drafted does not meet its key purpose as it does not provide certainty as to when mitigation will be delivered or provide that cessation of works will be required if mitigation is not in place. As an example the MOLF is required to prevent serious and substantial traffic impacts being incurred during main construction. The traffic impact assessment and subsequent mitigation is therefore predicated on delivery and operation of this facility to enable transport to site of [60 to 80%] of all materials. If this is not delivered early enough the traffic impacts would be outwith the assessed scope. . The IACC needs certainty that inappropriately high usage of highways will not result from late delivery of this facility and that can only be enforced by preventing transportation of materials over the assessed amount until the MOLF is delivered, there is nothing in the dDCO which provides for this restriction.

¹² Examination Library reference APP-447

- 7.2.3 The IACC object to the timing of delivery of the logistics centre prior to first nuclear concrete as being too late. By this stage considerable works will have been ongoing on site for up to two years necessitating a large number of HGV movements. The offline improvements and MOLF are also not scheduled to have been completed meaning that all transportation to the site for the first two years will be on the existing highway. These should be mitigated by delivery as early as possible of the logistics centre. Construction of this facility should start on day 1 of the construction period with delivery of it prioritised.
- 7.2.4 The IACC object to the delivery of the site campus in time for peak construction as being too late; please see Site Campus Chapter of the LIR.
- 7.2.5 The IACC considers that the Phasing Strategy for the development should be considerably wider than simply providing for key mitigation and cover all of the elements needed to deliver the development. Matters such as the provision of bedspaces in worker accommodation and parking spaces on sites should be subject to minimum levels and timings set out in the strategy to ensure that they are provided ahead of demand. This strategy could also set out triggers and timescales for restoration works which have been omitted from the requirements.

The application is unclear on the status of the Phasing Strategy. Under Article 76 and schedule 18 of the DCO, the Phasing strategy will be a certified document. Requirement PW2 Phasing of the authorised development provides “(1) The delivery of Key Mitigation must be in accordance with the sequencing set out in the Phasing Strategy, unless otherwise approved by IACC.”. The Phasing Strategy itself however states; “1.1.6 The final Phasing Strategy will be secured through a Requirement in the DCO. This will be a subsequent approval by the named authority”. This is inconsistent. If the phasing strategy is a certified document it should be in a form which provides the requisite level of detail and therefore control. If it is not then submission and approval of a complete, detailed phasing strategy should be secured by a project wide requirement and no works should be allowed to commence until it is approved.

- 7.2.6 The Phasing Strategy must be robust enough to ensure that should elements of the project which have to be delivered to make the project acceptable (all of the Key Mitigation) are not delivered on schedule, all works on the main site must cease until they are delivered.

7.3 **Construction Method Statement**

- 7.3.1 Requirement PW3 Construction Method Statement provides “(1) The construction of the Power Station Works, Site Campus Works, and Marine Works must be carried out in general accordance with the phasing and construction methodologies set out in Construction Method Statement, unless otherwise approved by IACC.”. The CMS however provides that the

only provides the general construction methods that have been used for assessment purposes within the Environmental Statement¹³.

7.3.2 The IACC as planning authority therefore considers that there is not enough certainty in the documents to provide a clear framework for the construction works and to allow enforcement if required. The DCO requirement confirms that the development has to only be in 'general accordance with' CMS; in combination with the uncertainty in the CMS itself this allows scope for many variations over which there will be no control. This approach lacks precision and certainty and does not provide the detail necessary to ensure that the development is carried out in accordance with approved methodologies.

7.4 Restoration and aftercare

7.4.1 In general the triggers for submission of restoration plans are far too late in the development. Requirements SPC13, WN9, WN11, WN12 and 13, WN21, OH8 requirement submission of these pre-operation which could be post main construction of that element. The IACC requests that outline plans are required to be approved prior to the commencement of the relevant part of the development (this is being sought through a planning condition for the site preparation and clearance works). Detailed plans, in line with the approved outlines, should then be required to be submitted for approval no less than 6 months prior to the anticipated completion date of the main construction of the relevant part of the project. All outline and detailed plans should include phasing or timing requirements for the carrying out and completion of restoration works. Management and aftercare schemes should be included in the detailed restoration plans submitted for approval in order to ensure that the planning authority can fully understand the proposals and how they will be maintained at the time they are being asked to approve them.

7.4.2 All aftercare and maintenance plans must include a minimum aftercare period appropriate to the landscaping and ecological needs of that site for a period of not less than five years; together with an explanation of how this will be undertaken and funded on land which is (or will during the relevant period become) outwith Horizon's ownership or control. The terms of requirements WN11(2)(e),WN12(3), WN13(3), WN14(3) are objected to as the period of maintenance or aftercare is limited by Horizon retaining an interest in the site. Horizon's land interests must allow for a sufficient period of aftercare to be undertaken or the sites they have included, otherwise these are not appropriate sites for the purposes for which they are proposed.

7.4.3 **SPC13 Restoration Scheme.** The trigger for the submission of the restoration schemes for the site should the development not proceed are unacceptably late. The IACC submits that this requirement should align with the relevant condition of the planning permission for site preparation

¹³ Construction Method Statement, Examination Library reference at

and clearance works. The requirement should therefore require an outline restoration and aftercare plan must be submitted before any works commence under the DCO (in order to capture the larger area than will be dealt with under the planning permission equivalent), with the detailed plan to be submitted no later than the earlier of 6 months from the taking of any decision not to proceed with the development or the expiry of five years from the date of making of the Order without any works under the DCO commencing on the main site.

7.5 Parameters

7.5.1 The IACC objects to use of AOD parameters for mounds without current, construction and finished ground levels being given somewhere to facilitate assessment. The IACC cannot from the information given, establish what height that will be above current and worked ground level various mounds will be. IACC consider that it is necessary to know how high mounds are from local ground level to tip. This is partly to allow proper assessment of the impacts and partly to ensure that the relevant mounds serve the intended purposes for screening. It is also necessary to ensure that they are safe as some of the gradients allowed are very steep (1:1). Such gradients are not acceptable for larger mounds unless they are carefully engineered and are unlikely to be acceptable in close proximity to residential properties due to the overbearing, wall-like impact of such gradients.

Minimum parameters are also required for some features to ensure these are acceptable. Landscape mounds have to be high enough to serve the function and a minimum should therefore be provided for these. Various requirements ([SPC2, WN15, WN16, OPSF5, PR5, LC5, LC6 and OH7]) provide for maximums for the provision of car parking, bike spaces but set out no minimums which must be provided at any stage, phase or time. This is not acceptable to IACC as it offers no control to ensure that these facilities are available for use at the appropriate stages of the development. The IACC require minimum level of provision for each phase to be in place prior to the start of that phase and that this is clearly secured either in the requirements or is set out in a certified document (such as fuller phasing strategy) to provide certainty and enforceability.

7.6 Other points on requirements

7.6.1 This section raises a number of points on requirements which are not considered to be addressed elsewhere only. In order to prevent repetition, this representation does not include any comments on requirements where a question has been asked of the IACC on that requirement in First Written Questions and the IACC's submissions on such requirements are set out in the response to the questions. This representation should therefore be read together with the Council's responses to the First Written Questions.

7.6.2 **WN18 Site campus health facility.** The IACC considers that approval of details for this facility (not just submission for approval – please see section 7.7 below) should be required pre-commencement of the development on the main site. There is currently no timing on delivery of this facility. The

health facility is stated to serve all of the workers, not just those resident on the campus. The need for the health facility will begin with site preparation and then increase considerably as workforce increases. This facility should therefore be in operation at the start of main construction, although the level of provision may increase to match the increase in workforce. The facility should be operational as one of the first buildings on the main site, along with any site offices. This facility needs to remain in place until after main construction and the large elements of restoration have been completed.

7.6.3 **Requirements OH9 and OH10** The provision of these sites is scheduled too late; providing enhancement after construction could result in double disturbance to species by then doing works in areas species have already relocated to having been disturbed by the main works. The approach in ECS conditions is considered to be more appropriate and these enhancement areas should align with that.

7.6.4 **Logistics centre.** A further requirement is necessary to secure maintenance of the logistics centre site at Parc Cybi once it has been decommissioned for an appropriate period. Please see Parc Cybi Logistic Centre Chapter of the IACC's LIR.

7.6.5 **Planting.** All trees, hedgerow and shrub plants and seeds used in all parts of the development should be of local/North Wales provenance and this should be a requirement of all landscaping and restoration schemes. It is therefore requested that this is made a project wide requirement or secured in the main CoCP certified document.

7.6.6 **Off site facilities.** A pre-construction survey of Building M3 and 'the old farm buildings' for bats should be undertaken pre-commencement and this should be secured in requirement OPSF2.

7.7 **Changes made to requirements in revision 2 submitted at Deadline 1¹⁴**

7.7.1 **Requirement PW9**

The deletion of the longstop wording "in any event within one month after the occurrence of those dates" reduces the certainty and enforceability of the requirement. Given that the obligation is only to notify, the IACC submits that a firm deadline is reasonable and should be considerably shorter than one month. The IACC requests that the longstop is reinserted under amendment of the period and suggests that five working days would be appropriate.

7.7.2 **Amendment of wording of various details to be submitted to IACC for approval**

Requirements PW11, SPC9, SPC10, WN3, WN6, WN11, WN18, WN19, WN21, WN23, WN25, OPSF2, PR3, OH3, OH4, OH5, OH8, OH9, OH10,

¹⁴ Examination Library reference REP1-004 in track and REP1-005 as a clean version

ECS2, ECS3, ECS4. The wording of these requirements has been altered so that the prohibition on carrying out works only applies until the required details have been submitted to IACC for approval rather than being approved by IACC. This change is clearly designed solely to benefit Horizon's programme and seriously and inappropriately undermines the role of the local planning authority in controlling the development through the discharge of requirements. The amendments represent a substantial dilution of control as works could then commence where the details submitted are determined to be unsatisfactory and approval is refused. In that situation, IACC as planning authority would have an entirely inadequate degree of control over those works. The IACC object to all of these amendments and request that the previous drafting is reinstated so that details have to be approved before the relevant works can commence. This amendment is particularly unacceptable in relation to requirements OH3, OH4 and OH5 where the details concerned are for the detailed design of the construction of highways which will become public highway and the responsibility of IACC. It is not acceptable that construction of these commences before the details are approved.

The IACC consider that the same principle also applies to the amendment to WN25, despite approval in that case being sought from NRW not IACC, and objects to that amendment.

7.7.3 Addition of items to the details to be submitted, requirements WN9, WN21, OH8

The IACC welcomes the additions made to these requirements. The IACC considers that details of the boundary treatments, landscaping, planting, external lighting, signage and any street furniture should also be required to be submitted for approval for the offsite facilities under requirement OPSF2, and for any amended design of the park and ride facility under requirement PR3 or the logistics centre under requirement LC3.

7.7.4 SPC5 Terns

The amendment of the date placeholders to the undefined term 'tern breeding period' is unacceptably vague. Requirements must, given the criminal consequences of non-compliance with them, be clear and unambiguous. The amendment is therefore objected to as lacking precision. The IACC is aware that breeding periods can vary from year to year but would prefer that a precautionary period of [01 March to 15 August in each year] is inserted with an ability for the Council to agree in writing to any annual variation of that subject consultation with NRW when the particular circumstances of any breeding season are known.

8 DCO: PROCEDURE IN RELATION TO CERTAIN APPROVALS

Schedule 19 procedure for approvals etc.

The IACC objects to the proposed schedule 19 process and considers that this requires substantial amendment to be fit for purpose. It is noted that this process would not only cover discharge of requirements but approvals from IACC where a tailpiece applies. This process could therefore involve considering amendments to critical documents containing key controls which would require careful and detailed consideration with input required from other parties.

8.1 Lack of an adequate phasing plan

8.1.1 In order to understand the likely requirements and demands on its resources the IACC requires a full phasing plan for the development to be shared which indicates when discharges and approvals are likely to be sought. Without this information the Council cannot properly consider how best to resource these demands or meaningfully plan staff deployment and allocation to ensure capacity is in place to process applications.

8.2 Lack of consultation

8.2.1 The schedule 19 process contain no general requirement for consultation and very limited ability for IACC to consult – these only apply where it is specified in the requirement concerned. Given the high level nature of the DCO documents and the vague nature of many of the proposals as to detail the IACC considers that this will result in a situation where there has been no meaningful consultation at all on many of the aspects of the project. The IACC also considers that as the process applies to the amendment of approved documents, the lack of consultation is entirely inappropriate as that would result in documents being amended by Horizon and IACC without any public or stakeholder involvement at all.

8.2.3 The IACC agrees that some requirements are suited to targeted consultation however the current dDCO proposals are far too restrictive and need to be considerably widened to allow effective consultation as required by the subject matter. The IACC considers that all major requirements subject to a general, public consultation given the importance of the subject matter of those and that there will have been no opportunity for anyone to comment on the detail contained in those at any previous stage. Meaningful changes to control documents also need to be the subject of wide consultation. The IACC consider that Horizon can and should undertake consultation on the detail of its proposals before they are submitted, similar to that currently being undertaken for variations to the DCO.

8.2.4 The IACC would suggest the insertion of the following process, which is based on the consultation process in other granted DCOs:

8.2.5 Details of consultation

(1) With respect to any major requirement, or any other requirement or approval which requires details to be submitted to the discharging authority for approval under this Schedule following consultation, the details submitted must be accompanied by a summary report setting

out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

- (2) At the time of submission to the discharging authority for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from discharging authority.
- (3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the discharging authority for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so.
- (4) Where the consultation responses are not reflected in the details submitted to the discharging authority for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.
- (5) The undertaker shall provide copies of any consultation response within two working days of request for these by the discharging authority.

8.3 Timescales and deemed approval

- 8.3.1 The Council objects to the inclusion of a deemed approval provision in this schedule. This is entirely inappropriate. In line with the normal planning process a right to appeal on the basis on non-determination should arise at the end of the set period, not an automatic approval. To change the planning process from a positive one where consent must be given to a negative one where it is deemed simply because an application is not approved in time is an unacceptable use of the ability to create bespoke discharge processes. Horizon has simply gone too far in trying to craft this process to operate to its own advantage. IACC notes that the Explanatory Memorandum cites the Thames Tideway Tunnel and Hinkley orders as precedent for this schedule; The Hinkley order at schedule 14(4) provides "4.—(1) The undertaker may appeal in the event that—... (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined under paragraph 1;"; the Thames Tideway order in Schedule 17 also provides that non-determination gives rise to a right of appeal not a deemed approval. The Council therefore does not accept that there is any appropriate precedent for the proposed approach.
- 8.3.2 The timescales allowed for the processing of what will be in many cases large detailed applications in entirely inadequate. The timescales suggested may be appropriate to the consideration of details under conditions of minor planning permission but fails entirely to take realistic account of the volume, complexity and importance of the matters which will be submitted under the DCO requirements. The time allowed for

consultation with other parties, including where IACC will required to consult NRW as a statutory body are thoroughly inadequate. Horizon are able to dedicate a full time team to preparing these applications, the Council and NRW have other responsibilities to meet and this process will be one workstream amongst many. Any time pressure should therefore on Horizon to have these submitted in time for proper consideration to be undertaken by the discharging authority in line with Horizon's programme, not on the discharging authority to have to process these in an entirely inadequate period of time.

- 8.3.3 The IACC requests that the time for consideration is amended from 35 days to 8 weeks for minor requirements and from 56 days 12 weeks for major where further environmental information is not required and 16 weeks where further environmental information is required. These timescales are predicated on each requirement being subject to an application and fee individually and it not being possible to submit multiple major discharges under one application with one fee as that approach would not support the resource needed to respond to such applications within the time allowed.
- 8.3.4 The IACC further requests that the time period for determination should not run where the discharging authority advises Horizon that there is an EIA or habitats concern which needs to be resolved before discharge of the application can be progressed - please see section 9 below for further consideration of the interaction of discharges with EIA requirements.

8.4 **Fees**

- 8.4.1 The proposed fees are inadequate to properly resource the amount of work required in discharging the requirements of the DCO or considering amendments to any approved document. The normal argument for low fees at conditons discharge stage, that the planning authority have already received a substantial fee at outline or full planning permission stage and that the discharges concern only minor matters of detail do not apply in this case. The discharges of requirements and amendment of plans for this project will include details which could have a serious and substantial effect on the impacts and which merit proper and full consideration.
- 8.4.2 The fees to be paid need to reflect the high volume of work over a considerable period (in excess of 12 years) which will be required simply to get the development to operation with the landscape being restored. The lack of a mechanism for fees to increase over time is unacceptable.
- 8.4.3 The list of major requirements for which higher fees reflecting higher workload must be paid is too short and should be expanded. An amendment is also required to bring consideration of amendments to key plans, strategy and documents into the scope of major requirements for the purposes of fees. The currently proposed fee calculation structure will need to be amended to align with this. The category 2 fees for major requirements are capped at far too low a level considering the major aspects of this development which do not include the construction of

buildings (including most of the park and ride and logistics centre, all of the A5025 works and a large area of landscaping on the main site).

8.4.4 The fee proposed for minor requirements would cover the cost of less than four hours of senior planning officer time, not allowing for any other input which will be required. As an example, requirement WN9 Final Landscape and Habitat scheme is currently classed as a minor requirement. This is an important scheme which will have a direct impact on the landscape and ecology of the main site for decades; the landscaping of the main site will have a direct effect on the neighbouring communities through the landscape character, the adequacy of screening and settling the power station into the landscape. It will have a direct effect on the setting of Cestyll Gardens. It will require input from the Council's ecology and landscape advisors, highways officers, liaison with and input from NRW and, in the Council's opinion, liaison with and input from National Trust as a minimum (the Council maintains that it considers public consultation to be necessary on most of the requirements). A fee of £234 is therefore entirely inadequate to address the work the Council is being asked to undertake in relation to this requirement.

8.4.5 Fees must be payable per requirement or part therefore for which approval is sought not per application. Allowing fees to be payable per application means that packaging of multiple discharges into one application results in the IACC receiving one fee for a disproportionate volume of work.

The IACC objects to the provision requiring repayment of fees for non-determination as the work which that fee should fund has already been undertaken.

8.5 Appeals

8.5.1 The IACC is aware that the Welsh Government has noted its role as appellate decision maker in Wales in relation to decisions made by local planning authorities. The IACC understand that the Welsh Government has submitted that it should be the appellate authority for refusals or non-determination under schedule 19. The IACC agrees that it would be in line with planning practice in Wales and the devolution arrangements for the Welsh Government to be the appeal authority under schedule 19 rather than the Secretary of State.

9 REQUIREMENT TO ENSURE EIA INFORMATION STILL CURRENT AT TIME OF REQUIREMENT DISCHARGE

9.1 Discharge of requirements will take place over a considerable period. For post construction landscape restoration plans could be well over a decade before these come forward for consideration. No mechanism is proposed for in the schedule 19 process for ensuring that the EIA is still valid and reliable when making that decision or to allow the IACC to require an update to the environmental information where that is required. This requires to be addressed in the DCO and IACC must be able to pause the

clock on applications where supplementary EIA is required to allow it to be produced, reviewed, and publically consulted on.

9.2 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 provide that applications made in pursuance of a DCO requirement which have to be approved before all or part of the development can begin are subsequent applications. Where a subsequent application is received the relevant authority (in this case IACC) must be satisfied that it has adequate information before it to properly assess the application. If the relevant authority is not satisfied the regulations provides that the authority “must suspend consideration”¹⁵ of the application until the requirements of the regulations are met. In such cases, in order to be able to comply with the legislation, IACC must be given the ability to pause the time period provided for determination under the DCO. Failure to allow for this will result in IACC being forced to refuse applications simply because they cannot be processed in time.

9.3 The legal requirement that IACC must suspend decision making on subsequent applications where further information is required under the environmental information regulations, also means the drafting of schedule 19 which allows for deemed approvals on the expiry of the determination period does not comply with the objective, approach or intentions of the legislation. This approach seeks to circumvent the clear legislative requirement that applications are not determined where the environmental information before the decision making authority is insufficient. Any deemed decision should be a refusal creating a right to appeal only, in line with every other planning process.

10 S106 AND MONITORING

10.1 The proposed s106 structure for delivery mitigation

(a) The Operative Parts of the s106 (Cl 1 to 28)

The Operative Parts of the S106 refers to the clauses that regulate how the parties will observe the mitigations covenants. The terms of the mitigation that will be provided are set out later in the Schedules to the agreement.

Operative Parts of an agreement are generally un-contentious, unless they look to undermine the strength of the covenants being provided, but that is not the case here. Accordingly there are only a few points of significance on this first part of the draft agreement, plus a number of minor drafting corrections that do not need to be reported here.

(a) Cl 2, Statutory provisions should note the relevance of the Wellbeing of Future Generations (Wales) Act which has an important role in defining the need for mitigation in relation to this development.

¹⁵ Regulation 23(3)(c) - Regulations 23 and 24 both provide that consideration must be suspended

- (b) Cl 6, Monitoring and the WNMPOP proposal are dealt with separately at section 10.2 of this representation.
- (c) Cl 7, Payments to third parties is addressed separately in section 10.2 of this representation. IACC's position remains that all payments should be made to IACC, who then, in appropriate circumstances would be accountable to third parties for them. The general principle is however accepted that the drafting of such covenants are better expressed in the negative (i.e. that no development shall proceed/continue until X payment is made...") to assist enforcement by IACC.
- (d) Cl 15, Variation in the terms of when an obligation must be complied with will need to be managed by a protocol for recording such applications and any process that is instituted for determining and recording those decisions.

(b) **The Mitigation Schedules**

There are three distinct forms of mitigation provided for in the s106

1. **Specifically identified mitigation steps.** These are described in different ways but are all fundamentally specified payments (in some cases to third parties) for identified purposes with identifiable trigger points that are not dependent upon any exercise of discretion by any party in terms of whether they are due. They are found in:
 - (i) Sch 1 Welsh language
 - (ii) Sch 2 Leisure facilities
 - (iii) Sch 3 Tourism
 - (iv) Sch 4 Employment, skills and supply chain
 - (v) Sch 5 Worker accommodation
 - (vi) Sch 6 Education
 - (vii) Sch 7 Transport
 - (viii) Sch 8 Health and wellbeing
 - (ix) Sch 9 Emergency services
 - (x) Sch 10 Construction noise
 - (xi) Sch 11 Environment and historic heritage
 - (xii) Sch 13 Rights of way
 - (xiii) Sch 14 Community involvement officers
 - (xiv) Sch 15 Implementation and monitoring

2. **Contingency funding mitigation.** These are generally described as "contingency" funds, occasionally as some other named fund, but share the characteristic that they are a sum of money that can be drawn down in the future to meet some broadly defined criteria relating to their subject matter. In each case, however, they are subject to the discretion of the WNMPOP in whether the funds should be released.

Contingency fund arrangements are for future payments to be made by HNP up to a specified maximum. They are not funds to be provided at the outset. They all relate to subject areas that are principally within the

jurisdiction of IACC such that payments under them are most likely to be made to IACC than to a third party. These Contingency Fund mitigation payments are found in:

- (i) Sch 3 Tourism
- (ii) Sch 4 Employment, skills and supply chain
- (iii) Sch 5 Worker accommodation
- (iv) Sch 6 Education
- (v) Sch 7 Transport
- (vi) Sch 8 Health and wellbeing
- (vii) Sch 11 Environment and historic heritage

3. **Community Fund mitigation.** This is found in Schedule 12. This is a broadly based arrangement that allows community groups that can be very widely defined, to apply for funding that is limited by a series of criteria that prevent purposes like e.g. political campaigning.

The Community Fund arrangements are also for future payments to be made by HNP up to a specified maximum. They are not made out of a separate fund paid in advance and held by IACC from the outset.

(c) **The scope of the Specific Mitigation and Contingency/Community Funds**

It is not proposed to make drafting suggestions here to the proposed s106 terms defining the purposes of the three types of mitigation. The Local Impact Report being submitted with these Written Representations provides detail on the mitigations that are required in order that DCO approval is given.

Negotiation of the future drafting of the s106 and its terms should follow this identification of mitigation required and ensure they are adequately secured.

Amendments inevitably will be required to the descriptions of the purposes to which specific mitigation funding can be applied, and so to that extent, at the present time none of that content in the Schedules is agreed.

The nature of the changes that will be required are generally characterised as:

- (a) Clarity on certainty and timing of trigger events
- (b) Avoidance of subjectivity in criteria for applying mitigation
- (c) The duration of any mitigation obligations
- (d) Flexibility in the application of specific mitigation sums within the overall objective identified
- (e) Full regard to the Proximity Principle in approaching mitigation
- (f) The ability to use underutilised mitigation funds where other mitigation funds have been shown to be inadequate
- (g) Review of the appropriateness of any “reasonable endeavour” clauses to secure objectives

- (h) Provision of detail of plans/terms of reference not yet submitted but referred to in s106 Schedules, including (by way of illustration and not to be an exhaustive list as plans and schemes required may presently not be referred to in the draft s106):
 - (i) Jobs and Skills Implementation Plan
 - (ii) WNESS
 - (iii) Supply Chain Action Plan
 - (iv) Worker Accommodation Management Service
- (i) As per comment above, payments for the benefit of third parties to be made to IACC.
- (j) The need for all heads of mitigation to have access to contingency funds
- (k) Agreement of comprehensive standards of monitoring of effects
- (l) Ensuring adequate means of tackling potential default

(d) Quantum and timing of funds

At the point of submitting this representation, the quantum of each specific mitigation contribution and of each fund (Contingency and Community) is unknown which limits the ability of the IACC to fully assess the purposes to which the funds should be put, the nature of the controls needed over them and accordingly their likely effectiveness.

It has been stated already by IACC that a point of major concern with all the Contingent and Community Funds is that they are reactive, not proactive, which presents a major obstacle to their effectiveness in being able to anticipate and avoid adverse impacts.

The suggested basis of the funds being a maximum liability that HNP can face in the future, rather than sums that are lodged in advance, then raises a need for adequate security for those sums.

It also raises a perception that there could be a financial advantage to the DCO developer in resisting approval of mitigation payments.

(e) Provisions inhibiting use of mitigation funds

The Contingency Fund and Community Fund mitigations have the following key cross references to the WNMPOP and to limitations of use of monies:

- (a) CI 6.2 - That the actions of the WNMPOP are in any event subject to the developer's "reasonable opinion" as to whether they are working effectively and if not, alternative mechanisms will be proposed.
- (b) CI 7 – any third party payments are paid only once the relevant trigger event has occurred, only if the "Annex 1" Requirements have been met and only if the payee has completed a form of covenant.

- (c) Sched 17 – any mitigation sums unused after 10 years from the s106 coming into effect are to be returned with accumulated interest to the developer.
- (d) Sched 16 –the WNMPOP can veto the release of funds in any case.

All of these combine to create circumstances in which mitigation funds may not be utilised, either by placing obstacles in the way to securing approvals to make mitigation payments, or by creating a situation whereby there is, at a minimum, the perception of there being a financial advantage to the developer in resisting approval of mitigation payments.

10.2 The WNMPOP Proposed Operation

- (a) **HNP's role on the WNMPOP**

- 10.2.1 HNP's proposal is that the WNMPOP is to be charged with allocation of Contingency Fund and Community Fund monies paid via the Section 106.
- 10.2.2 Core membership of the WNMPOP is suggested by HNP as 5 or more, with a minimum of 2, being HNP and IACC in all cases. The unstated assumption appears to be that only one vote will be available to each party, including IACC.
- 10.2.3 The presence of HNP as a voting member on the WNMPOP places them in a substantial position of influence both in terms of any voting decisions in which they participate, but also in terms of influencing other participants in that or in future votes. The extent of that influence does depend on the number of participants and whether majority votes carry the day, whether casting votes are used and in whose hand such a casting vote resides.
- 10.2.4 HNP's influence will, however, never be less than substantial. The creation of a perception of there being a financial advantage to the developer in resisting approval of mitigation payments, referred to above, is also what was described in IACC's Deadline 1 response, of HNP being "Judge in its own cause with regard to the outcome and monitoring of mitigation".
- 10.2.5 IACC's position remains that it is inappropriate for HNP to have any formal status as decision maker in respect of any Contingency Fund or the Community Fund. If the Contingency or Community Funds are to be of significant strategic importance to the discharge of the Council's statutory responsibilities in securing mitigation for adverse impacts arising from the development control of it cannot be passed to a body that would have the ability to largely or even totally frustrate the Council's future use of those funds.

10.2.6 The dispute resolution procedure at Section 12 of the s106 is not an appropriate forum to overcome differences of opinion over allocation of funds through the WNMPOP, because:

- (a) legitimate exercise of discretion by HNP in casting of a vote through the WNMPOP would likely be outside of the jurisdiction of an Expert in terms of resolving disputes, and
- (b) the time taken in engaging dispute mechanisms and allowing for any right of appeal, is likely to remove it from being any practical means by which differences of opinion between parties can be satisfactorily resolved.

(b) **Other Third Party roles on the WNMPOP**

10.2.7 IACC has consistently maintained that as enforcing body for the s106, it would expect to carry out on-going consultation and engagement with bodies that would be the ultimate beneficiaries of payments of mitigation sums and that IACC would be fully accountable to such bodies for the distribution of such sums to them.

10.2.8 The constitution and operation of the WNMPOP however, as proposed by HNP, would move those third parties to equal status in the process of defining whether mitigation sums were due, for any purpose.

10.2.9 There are obvious concerns that have been raised by IACC in the Examination already¹⁶ as to now IACC's role as enforcing body for the s106 could be reconciled with the delegation by it, jointly to other bodies, of future decisions on the extent of mitigation payments required of the Developer for which only IACC can be responsible as contracting party to the s106.

10.2.10 The possible accommodation of a formal role for any third parties in the decision making process about how any or all of the future liability for mitigation payments is to be determined, is however the subject of on-going negotiations. IACC are participating in these negotiations without prejudice to these objections in principle.

11 CODES OF CONSTRUCTION PRACTICE

11.0 This commentary on the Codes of Construction Practice and sub Codes of Construction Practice (CoCP/sCoCP¹⁷) is divided into two sections:-

¹⁶ see IACC summary of oral case at the ISH of 24.10.2018, containing the submissions of Martin Kingston QC, Examination Library reference REP1- 018

¹⁷ One of the Codes is slightly differently titled, being the Code of Operational Practice (CoOP) see application document 8.13, Examination Library reference APP-421 however for ease of reference here is not separately mentioned, although the same comments apply to it generally as to the CoCP and sCoCPs.

- (a) General commentary by IACC on the approach adopted by HNP; and
- (b) Specific highlighted matters that require further information from HNP, in default of which the terms on which the development consent order should be approved should follow the suggestions made below.

11.1 General Commentary

(a) The place of the Codes within the DCO

The DCO refers to the CoCP and sCoCPs in two places, Article 76 and in the Requirements.

Under Article 76 the CoCP and sCoCPs are specified as certified documents within the DCO. Accordingly the precise content of them are recognised as being of special importance in terms of defining the extent of the powers and responsibilities of HNP in developing and operating the generating station.

The lack of detail in the CoCPs and the role that is proposed to be fulfilled by the WNMPOP (and through it HNP) in defining that detail is in stark contrast to the detail that would have been expected in a series of documents with Article 76 certified document status.

There are 10 CoCP references in the dDCO Requirements and one CoOP that raises similar issues.

PW7, Project Wide SPC3, Site prep and clearance site	WN1, Main
WN17, Site campus WN24, Marine works Offsite works	OPSF1,
PR1, Dalar Hir A5025 Offline	LC1, Parc Cybi OH1,
ECS1, Offsite ecology	OPSF1, Main Site

In each case the Requirement is to observe the CoCP, the purpose of which being to ensure delivery of the mitigation contained within the CoCP.

The references in each Requirement to observance being “...unless otherwise approved by the planning authority” are inappropriate for documents with the status of a certified document.

(b) The intended purpose of the Codes

The general Code of Construction Practice¹⁸ is proposed to be read in conjunction with each specific sCoCP. CoCP and sCoCP operate, in effect, as self-imposed rules by which HNP will carry out the development and it is intended that those rules will be enforceable against them. It is

¹⁸ Examination Library reference APP-414

therefore of critical importance that the rules are expressed in a manner that makes them sufficiently certain in order that effective enforcement of them can be undertaken.

Other similar documents intended to operate in this fashion, but subordinate to and referred to in the CoCP include the Construction Environmental Management Plan (CEMP), para 1.2.2 and the Worker Accommodation Strategy (WAS), para 3.2.18. However it is confirmed at paragraph 2.4.3 that CEMP is to yet to be drafted, so the detail of it is not known. The WAS is subject to the same issues set out below of defining its extent and enforcing its terms.

The intent (paragraph 2.3.3) is the CoCP and sCoCPs are demonstrating the manner in which mitigation referred to in the Environmental Statement will be secured. Paragraph 3.2.14 also state that these documents sets out how socio economic impacts will be monitored.

Paragraph 3.2.5 and 3.2.9 refer to the programme board (now the WNMPOP) and how that will operate to control the release of mitigation funds under the s.106 Agreement.

IACC challenges the statements made above that the COCP and sCoCPs demonstrate how mitigation will be delivered. The challenge is that these are merely assertions unless and until sufficient detail is supplied for there to be certainty both as to what the mitigation will be and the ability for IACC to enforce its delivery.

(c) Good construction practice

In a number of places in both CoCP and sCoCPs there are statements of good working practices that will be observed. An example can be found at section 4 of the CoCP that describes site management strategy and describes the series of subsections on good working practices that will be adopted such as for site lighting, security and emergencies. IACC welcomes the intent to undertake these actions but observes that they are what any responsible developer would be expected to do on a major construction site. If observed, they will undoubtedly contribute to the avoidance of adverse impacts but they are not matters which would ever expect to be the subject of detailed controls by a planning authority nor are they linked to the avoidance of specific adverse impacts in the environmental statement. Statements of good practice like this are not commented on further by IACC.

(d) Observing relevant legislation

Similarly, there are references to observance of specific legislation, for example paragraph 9.3.8 of the CoCP which describes how the legal provisions of s.34 Environmental Protection Act 1990 will be observed in terms of complying with the duty of care to avoid unauthorised and harmful disposal of waste. Again, where references are made to external legal codes they do not need to be the subject of specific powers of enforcement under the DCO and it is assumed that they represent baseline conditions

such that no adverse effects would arise in respect of the development that could otherwise be controlled and avoided by such legislation.

(e) Sufficiently specific controls

A number of provisions in the documents, for example paragraph 10.4.1 of the CoCP dealing with the provision of oil storage bunding of 110% of the capacity of any oil storage tank, is the kind of detailed provision that might be expected in a major construction site. It is capable of enforcement and it secures the avoidance of adverse environmental effects.

Where similar detailed provisions are contained in the CoCP and sCoCPs that are considered adequate to serve the purpose for which they are intended, no further comment is made on them in this section. However the matters in the following section are those that can be found in the CoCP and sCoCPs where important environmental effects are to be managed and adverse effects mitigated by detail that is not yet present. The following section particularises this and proposes the action that ought to be taken in the confirmation of the DCO in respect of this missing detail.

11.2 Specific elements of CoCP and sCoCP's demonstrating inadequate detail

CoCP (Document 8.6)¹⁹

- i. 5.2.4 Shuttlebus provision – has no detail as to level of shuttle services that will be provided.
- ii. 5.2.4 Logistics delivery times will only be observed “where practical”.
- iii. 5.4.9 Car sharing “will be promoted” but no certainty beyond that.
- iv. 6.2 Public rights of way protection is described in general terms but not in detail that is enforceable.
- v. 7.4 Air quality dust thresholds are to be set in agreement with IACC but no present detail is supplied.
- vi. 8 provides no specific noise standards referable to particular activities or specific noise receptors.
- vii. 11.2 Ecological protection practices which will be observed but only “where practical”.

Main site sub-CoCP²⁰

- i. 7.5 emissions to air monitoring reporting scheme will be developed including the agreement of thresholds. Those thresholds are not presently supplied.

¹⁹ Examination Library reference APP-414

²⁰ Examination Library reference APP-415

- ii. 7.6.7 amber and red dust monitoring levels "will be agreed" but detail is not presently supplied.

Marine Works sub-COCP²¹

- i. 5.3.6 Port Emergency Plan would include measures that the Harbour Authority would need to have in place to accommodate the controls of the Emergency Services in the event of an emergency – these measures not presently supplied.
- ii. 5.3.7 An oil spill contingency plan will detail actions to be taken in the event of oil spill. Details not currently provided.
- iii. 5.9.1 States that appropriate navigation aids are provided to light the works appropriately will follow after consultation with Trinity house. No further detail provided.
- iv. 7.4.7 amber and red trigger levels to be set for the PM10 concentrations based on preventing breaches of the 24-hour mean air quality objective to control long term increases in particulate concentrations. Thresholds not presently supplied.
- v. 11.3.2 Horizon will produce and adhere to a Biosecurity Risk Assessment and Method Statement based on industry standards. No details provided on what industry standards they will comply with.

Off-Site Power Station Facilities sub-COCP²²

- i. 11.2.1 Horizon is to undertake landscape site inspections however there is no determination of what will constitute appropriate landscaping. IACC would need to view the Inspection results.
- ii. 11.4.1 States that provision of replacement bat roost (in form of bat boxes) will be provided; however is no detail as to minimum amount produced.

A5025 Off-line Highway Improvements sub-CoCP²³

- i. 4.5.1 On completion of works, any land required temporarily for construction works will be returned to its original condition. No detail as to who decides when the land is returned to original condition.
- ii. 7.2.2 No detail of alternative methods of dust suppression provided where it is not possible to re-vegetate or cover with topsoil.

²¹ Examination Library reference APP-416

²² Examination Library reference APP-417

²³ Examination Library reference APP-420

- iii. 7.2.2 No detail provided to substantiate how Horizon will avoid explosive blasting, using appropriate manual or mechanical alternatives in controlling dust emissions.
- iv. 7.3.3 Amber and red trigger levels will be set for the PM10 concentrations and the thresholds will be agreed with the IACC. No detail forthcoming on the thresholds.
- v. 8.2.2 Where works are required within the safe working distances, alternative equipment or working methods will be investigated and vibration levels will be reduced to the greatest extent practicable. No detail provided how alternative equipment or working methods will be investigated.
- vi. 11.8.1 A landscape management strategy is to follow the completion of the works, to ensure successful establishment of proposed landscaping and long-term viability of planting. No detail has been provided as to who will confirm who decides that replacement planting has been carried out on a like for like basis.
- vii. 11.9.1 No detail on who will judge if land used temporarily for construction works has been returned to its original condition after the completion of works.

Park & Ride sub-COCP²⁴

- i. 7.2.2 No detail provided to substantiate how Horizon will avoid explosive blasting, using appropriate manual or mechanical alternatives in controlling dust emissions.
- ii. 11.2.1 Hedgerows, trees (including root protection zones) and walls will be retained and protected wherever practicable. Lack of detail provided on what is “practicable”.
- iii. 11.2.6 Horizon is to undertake landscape site inspections however there is no determination of what will constitute appropriate landscaping. IACC would need to view the Inspection results.

Logistics sub-COCP²⁵

- i. 6.2.2 During Construction how will shared use cycleway/footway access road be maintained? Insufficient detail provided.
- ii. 7.2.1 Who will inspect on-site haul routes will be inspected and who will carry out any necessary repairs to the surface? Insufficient detail provided.

²⁴ Examination Library reference APP-418

²⁵ Examination Library reference APP-419

- iii. 7.2.4 No detail provided to substantiate how Horizon will avoid explosive blasting, using appropriate manual or mechanical alternatives in controlling dust emissions.
- iv. 11.2.4 Horizon is to undertake landscape site inspections however there is no determination of what will constitute replacement planting on a like for like basis. IACC would need to view the Inspection results.
- v. 12.2.1 & 12.2.2 Provides that there will be photographic surveys undertaken to record the setting and provide a permanent visual record of the current condition of the 2 heritage assets. However, no detail for when the surveys will take place.

Code of Operational Practice (CoOP)²⁶

- i. 3.1.2 Horizon are to coordinate a series of regular communication meetings with key stakeholders including local communities. No detail on how regular meetings will be.
- ii. 4.2.1 Insufficient detail on how Horizon will identify potential environmental emergencies throughout the operational phase of the Power Station.
- iii. 5.2.6 Insufficient detail provided on how Horizon's delivery booking system will ensure deliveries are managed according to the capacity of the loading facilities available at the Power Station.
- iv. 5.2.7 Insufficient detail on how Horizon will review Servicing and maintenance activities on the Transport Network.
- v. 5.3.17 Insufficient information on how Horizon will promote and encourage the use of public transport by staff.
- vi. 5.3.25 Insufficient detail on the review and monitoring of the Operational Travel Strategy. What will constitute regular review?
- vii. 6.2.1 How will the Ecological Compensation sites at PRoW 23/001/2 and PRoW 23/001/3 will be reinstated following construction at works to the Cors Gwawr site? Lack of detail provided.
- viii. 6.2.2 Insufficient detail on how PRoWs that are routed across land within the Order Limits will be maintained.
- ix. 12.3.1 Lack of detail on who provides on-site inspections in determining whether replacement planting is required.

11.3 Action required in respect of inadequate detail

- 11.3.1 In respect of all the above matters where details are to be supplied or agreed, if those details are not to be presented and

²⁶ Examination Library reference APP-421

agreed specifically during the examination process then it is essential that the following provisions are mandatory throughout the CoCPs and sCoCPs :-

- (a) that any standard to be agreed or against which information will be provided in the future shall be provided "to IACC's reasonable requirements"; and
- (b) that contingency mitigation funding shall be available for purposes including any impacts arising where standards in CoCPs and sCoCPs arising after failure to agree or observe such standards where those adverse impacts are not the subject of specific mitigation requirements already provided in the s.106 Schedules.

12 COMPULSORY ACQUISITION

- 12.0.1 The Book of Reference²⁷ for the DCO includes a number of plots within which IACC has an interest. This number is currently not finalised as several plots are still being investigated. The IACC provided a provisional list of affected plots in its submission at Deadline 1 in response to a request from the Examining Authority²⁸.
- 12.0.2 The IACC reiterates its objection to the inclusion of areas of the public highway and its verge within the scope of compulsory acquisition under the DCO. It is entirely unnecessary to include the public highway in the scope of compulsory acquisition.
- 12.0.3 IACC as Highway Authority are willing and able to enter into agreements to facilitate the necessary works to the public highway in a manner which respects the Highway Authority's need to maintain control of the public highway network and to manage occupation of the carriageway in the interests of public safety and effective traffic management. The IACC notes that there has been no formal engagement or discussions held with IACC Highways or Property officers regarding the acquisition of rights or interests in public highway land. Horizon has not sought agreement on alternative means of gaining the rights required for these works. A S278 highways agreement has been successfully concluded between Horizon and IACC for the A5025 online works and IACC would be willing to progress such agreements (i.e. S278 and/or S38) to facilitate these works; Horizon has not made any approach seeking to discuss putting in place such agreements. Horizon has therefore failed to comply with guidance which requires that all reasonable alternatives to compulsory acquisition are explored before these powers are sought and to demonstrate that the powers are necessary.
- 12.0.3 IACC understand from recent discussion with Horizon that there is no intention to seek to compulsorily acquire any Highway Authority

²⁷ Examination Library references APP-034, APP-035, APP-036

²⁸ IACC Deadline 1 submission, Examination Library reference REP1-019 in response to action point 5

interests. Horizon advise that the intention is ensure that they have acquired all necessary subsoil rights to allow construction of tie-ins between the existing and new highway sections. Horizon officers have advised IACC officers that the dDCO will be amended to exclude highway authority interests. IACC awaits sight of the amendments to the dDCO which clarify that. Should those amendments be satisfactorily made, IACC will be able to withdraw its objection to the relevant aspects of compulsory acquisition. Pending those amendments being made in acceptable terms, the IACC maintains its general objection to the inclusion of areas of the public highway and its verge within the scope of compulsory acquisition.

12.1 **Temporary Possession**

12.1.1 Article 35(1)(a)(ii) of the dDCO allows Horizon to take temporary possession of any of the Order Land where it is not listed in Schedule 14 provided that certain compulsory acquisition procedures have not commenced. The land plans show multiple plots of operation public highway which are noted as being subject to temporary possession powers however all highway within the order limits is susceptible to the operation of this power under Article 35.

12.1.2 The IACC maintains its objection set out in its Deadline 1 submission to the inclusion of public highway within the scope of powers of temporary possession. It is unacceptable to IACC as Highways Authority that a private developer can take and exclusively possess any part of the public highway for an undefined period of time without any control of that by the Highway Authority. Such an ability in the hands of another party means that IACC cannot effectively and safely manage the public road network, co-ordinate roadworks as it is required to do by statute or effectively plan its own maintenance programmes as it has no certainty as to when the public highway in the locations covered by these plots may be closed or restricted by Horizon.

12.1.3 There is no need for public highway to be included within the scope of these powers given that the IACC is prepared to enter into agreements where occupation of the highway is necessary to construct the project, particularly the A5025 highway works where the IACC has a clear interest in ensuring those works are completed to an appropriate standard.

12.2 **Creation of new rights – extent of new rights required by Highways Authority**

12.2.1 Horizon have defined various rights to be created by acquisition by them, however in relation to new areas of public highway to be constructed the Highway Authority will require to be given the necessary suite of rights to maintain those before they can become

public highway. Articles 8 and 9 limits the ability to transfer any benefit of the Order to any other person. Article 27 (compulsory acquisition of rights) specifically provides for statutory undertakers whose apparatus is affected to be transferred rights but the terms of that would not cover IACC and in any case lacks the certainty the Highway Authority needs as such transfer is subject to Horizon obtaining later consent.

12.2.2 The IACC seeks an amendment to the DCO to address the need to obtain suitable rights for their benefit. This could be done either by specifying in a schedule that rights for the benefit of the Highway Authority will be acquired over listed plots or by allowing the transfer of the benefit of the order to allow the transfers of rights acquired by Horizon to the Council at the time the highway works concerned become public highway. There is precedent for including for the transfer of benefit of defined rights under an order within a DCO, most commonly to allow statutory undertakers to undertake works to their apparatus which have been consented through the DCO²⁹.

12.2.3 IACC require that the rights to be acquired by Horizon for their benefit are set out in the Order for clarity and so that the extent of these can be reviewed and landowners who will be subject to such rights have been proper notice of that. That such rights are acquired for the benefit of the Highways Authority needs to be provided for in the DCO and no later consents can be required.

12.2.4 IACC require rights to access all of the new public highway and its associated infrastructure (including drainage features and connections, bridges and embankments) for maintenance. This must include access from all directions, including from adjacent land, and at all times.

12.2.5 The IACC would welcome the opportunity to discuss the detail with Horizon in order to produce a full schedule of the assets to be constructed however in order to demonstrate the scope of rights needed the IACC has produced a provisional list of assets shown in the drawings to which it would need full access:

- (a) Section 1 - Valley
Culverts
Silt traps
Headwalls
- (b) Section 3 - Llanfachraeth
Culverts
Headwalls
3x attenuation ponds
Viaduct (including abutments, etc.)

²⁹ See for example The M20 Junction 10a Development Consent Order 2017, Article 10(4) which transfers the benefit of the order for specified works to the listed utility companies.

Overbridge (including abutments, etc.)
Cattle underpass

- (c) Section 5 - Llanfaethlu
Culverts
Headwalls
3x attenuation ponds
Cattle underpass
- (d) Section 7 – Cefn Coch
Culverts
Headwalls
3x attenuation ponds
Underpass
Overbridge (including abutments, etc.)

12.3 Creation of rights over private means of access (PMA) to be created

- 12.3.1 New PMA A4/4 provides drainage and an access to a highway drainage attenuation pond. The statement of reasons³⁰ provides that the purpose for acquisition of this plot is Acquisition of drainage and access rights in relation to the construction and maintenance of the Off-Line Highway Improvement Works at Llanfaethlu (Section 5) and Other Associated Development. New PMAs 4/7 and 4/8 also provide drainage and an access to a highway drainage attenuation pond over which new rights are to be acquired.
- 12.3.2 The application documents provide that new rights are to be acquired over these accesses but does not specify who those rights are to benefit. These drainage routes and accesses will form part of the drainage of the public highway and the rights obtained therefore need to benefit IACC as Highways Authority.
- 12.3.3 In the case of new PMAs 4/7 and 4/8, Horizon propose to enable access to an attenuation pond via a public right of way. The IACC requires also confirmation that this track and the rights to be acquired will be suitable to allow use by large vehicles (i.e. JCB) to enable maintenance of the pond.

13 BIODIVERSITY AND GEOLOGICAL CONSERVATION

- 13.1 EN-1 states that “Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI ... development consent should not normally be granted”. HNP provides that during construction major adverse effects on Tre'r Goff SSSI would result from water quality and quantity changes and are likely to remain despite identified mitigation. This would cause a major adverse effect on species for which the SSSI is notified. There

³⁰ Examination Library reference at APP-032 page75

are also likely to be adverse effects during the operation phase. The IACC does not consider that Horizon have properly considered or justified this adverse impact on the SSSI in the application. There are a number of measures which Horizon could take to reduce the potential harm to this site; one of those measures is the alteration of the layout of the site campus which is considered in section 14 of this Written Representation below.

14 SITE CAMPUS ALTERNATIVE LAYOUT

14.0.1 Horizon propose to build the site campus in three stages (Stage 1 - 1,000 bedspaces), (Stage 2 - 2,500), and (Stage 3 - 4,000). These will be built from the west of the site to the east (starting from the amenity building outwards in both instances). From the Amenity Building West and South, there are four 7 storey blocks (each housing 228 workers) and eleven 4 storey accommodation blocks housing 129 workers in each (an average of just over 32 workers per storey).

14.0.2 This provides a total of 2,331 bedspaces West/South of the Amenity Building. The IACC believe that in order to minimise impact on the Tre Gof SSSI and the Wylfa Head Wildlife Site, the site should be further concentrated to the West / South of the Amenity Building. Given the backdrop of the existing Wylfa Magnox power station and Dame Sylvia Crowe's mound, the proposal would have far less impact (landscape, visual, ecological) by condensing the development within a smaller area / footprint, but with potentially larger (i.e. taller) accommodation blocks.

14.0.3 IACC consider that given the development has been assessed for seven storey buildings the proposed increase in the height of intermediate buildings down to the four storey buildings is within the assessed impact envelope as the intermediate buildings will be viewed against the taller ones which remain the maximum permitted height. IACC's view is that the stepping down to four storeys would not increase the overall height. The increase in massing would be balanced by the overall reduction in built footprint and benefits accrued from the removal of built structures from the visually sensitive headland areas and the ecologically sensitive area at Tre Gof SSSI could outweigh the visual impact of intensifying the density of accommodation blocks. The change in layout may also provide additional mitigation in the form of screening, planting, drainage plans etc. to reduce impacts on the SSSI in particular.

14.0.4 The IACC consider that if larger accommodation blocks are provided West / South of the Amenity Building, stepping down towards the Amenity Building (i.e. a combination of 7, 6, 5 and 4 storey buildings) Horizon then remove the three accommodation blocks on Wylfa Head and potentially some of the accommodation blocks to the east of the site. Adding storeys to create a stepping down, using the average density of 32 workers per storey would allow 64 more

workers to be accommodated in a new six storey block on the space allocated to one the planned four storey blocks. Just two six storey blocks would therefore provide 128 more bedspaces than four storey blocks and allow the removal of one complete four storey block. This would reduce the footprint of the site campus, which would reduce effects on landscape fabric as well as reducing effects on landscape character, visual amenity, SSSI and the Wildlife Site.

14.0.5 Horizon state that *there is opportunity to reduce the overall number of storeys should the Site Campus be built for fewer than 4,000 residents. It would be possible to reduce the minimum number of storeys to three³¹*. In a meeting on the 18th October 2018, Horizon confirmed that they would commit to fully building out the 4,000 bedspaces on the site campus. The IACC want to see the phasing of delivery of this secured by the phasing strategy or requirements.

14.0.6 The IACC's position is that the use of the site campus, if consented, should be maximised early and for as long as possible to minimise impacts on the affected housing sectors. This is particularly important where mitigation for other sectors will take some years to be fully in place, for example measure to increase permanent housing and private rented supply through new builds and refurbishment of disused property will take some years to deliver adequate numbers. If there was a reduction in peak construction workforce therefore, this reduction should be felt across all other accommodation sectors (and not the site campus) to protect the housing and tourism sectors. IACC considers that maximum use should be made of the site campus throughout the development and not only at peak.

14.0.7 This position is supported in the Wylfa Newydd SPG³² where it states *“as set out in GP28b i, campus style temporary workers accommodation proposed at the main Wylfa Newydd site should be delivered in a phased way in order to ensure that it prevents rather than reacts to impacts upon the local housing market. Where campus style temporary worker accommodation is approved, it should be viewed as the preferred solution for accommodating the approved number of the construction workers. Strong reasoned justification will be required for not maximising the use of this Campus in favour of other types of accommodation. Approved campus style temporary worker accommodation should be provided in full at an early stage of the main construction period to prevent, rather than react, to any negative impact on the local housing market”*.

14.0.8 Further information and clarification is required from Horizon on the existing proposed site layout, how this position has been reached and what is the scope to amend the size, location, and orientation

³¹ Design and Access Statement, volume 3 Examination Library reference APP-409 at paragraph 3.3.10

³² Wylfa Newydd Supplementary Planning Guidance (supporting text following GP28b) Page 142

of these accommodation and amenity blocks. Horizon have produced a site selection report for the Site Campus³³, but this site selection report does not contain options within the Wylfa Newydd Development Area itself. All the options outlined in the Design and Access Statement are on the same site and little consideration has been given to different alternatives within the Wylfa Newydd Development Area site boundary. The Site Selection Report for the Wylfa Newydd Development Area does contain a brief assessment of alternatives (Option A and Option B), but this assessment concludes³⁴ that the selection site (Option A) is preferred as it's the only site within the WNDA able to provide sufficient area, it's further from the main construction (than Option B) and more remote from existing communities (of Tregele and Cemaes). Further detail on alternatives and design evolution is also contained within the ES Volume D – WNDA³⁵. Although the IACC appreciate the site limitations and constraints, the IACC believe that further options should have been considered and assessed in order to provide the most appropriate solution for locating the TWA. For example;

- (a) Are there any other sites within the WNDA that could have been considered?
- (b) Is there potential to split the TWA within the WNDA to reduce impacts (e.g. 2,000 on one site, 2,000 on another) with shared amenities?
- (c) Why has 4,000 bedspaces been selected as the appropriate number? Why not 3,000, 5,000 or even 7,000? No justification has been provided for this number.
- (d) Is the site suitable for the accommodation of 4,000 workers? Need assessment of all alternatives to determine most appropriate solution.
- (e) Given the site constraints and impacts on North Anglesey, would an off-site campus provide a better solution?

14.0.9 The IACC have raised these concerns in our Relevant Representation³⁶ and in previous consultation responses to Horizon³⁷. Horizon state in their Design and Access Statement and Planning Statement³⁸ that “*the design of the facility has been developed in consultation with a number of stakeholders including, but not limited to, the following... (including IACC in the list)*”. The

³³ 8.24.4 Site Selection Report - Volume 4 – Temporary Workers' Accommodation, Examination Library reference APP-439

³⁴ Ibid, at paragraph 6.6.8

³⁵ ES Volume D – WNDA Development D2 – Alternatives and Design Evolution, Examination Library reference APP-121 at section 2.3.104 – 2.3.114

³⁶ Examination Library reference RR-020 at section 5.11

³⁷ IACC response to Horizon PAC3 Consultation (paragraph 4.15 – 4.21) ([Link](#))

³⁸ Examination Library reference APP-406

IACC can confirm that it has had no engagement with Horizon on the design and layout of the site campus.

14.0.10 The lack of consultation and input on the site campus prior to the submission of the DCO was very disappointing. Following PAC2, Horizon underwent an 'optimisation process' to ensure that they have a commercially viable project. Coupled with this was the change in legislation, which meant that Horizon could now include the site campus within their DCO application. Horizon consequently changed their Workforce Accommodation Strategy and now propose to accommodate up to 4,000 workers on-site in a TWA (whereas the previous number was 500). Horizon consulted on these changes as part of PAC3, but this was a very limited 30-day consultation that had very little detail on the new proposed site campus³⁹. The consultation asked two very basic questions⁴⁰, which the IACC believes brings into question the meaningfulness of this consultation (as highlighted in the IACC's response to the Adequacy of Consultation⁴¹).

14.0.11 In the absence of detail and with limited flexibility to amend the site campus to the most appropriate solution, the layout of the site campus this will have a negative impact on landscape character, landscape fabric, visual amenity, the SSSI and Wylfa Head. Guiding Principle GP28b (vii) of the Wylfa Newydd SPG states that proposals should minimise and mitigate seascape, landscape and visual impacts by good design, screening, and sensitivity in locating built elements, external appearance, massing, scale and quality of materials used.

14.0.12 The IACC does not believe that the design of the site campus proposal has had sufficient regard to these landscape, visual and ecological impacts and the scale of the proposed development (including its proposed footprint) has not had sufficient regard to the sensitivity of its surroundings (SSSI, ancient woodland, Wylfa Head local wildlife site, etc.). The proposal could have been more sensitively designed by condensing the proposed development (and hence impacts) around the amenity building with less disruption to the ground closest to the SSSI. This would also have the added benefit of providing more open air recreational space and relocating the MUGA so it is not adjacent the existing bat barn. This would also allow more space to provide a larger amenity building.

14.0.13 The IACC accordingly requests that the Examining Authority consider this in detail, including the possibility of revised layouts for the site campus. To enable meaningful progression of alternate layouts, it is necessary to ensure that sufficient flexibility is provided in the DCO to allow for the proposed changes if necessary. The

³⁹ PAC 3 Main Consultation Document section 5.5 (page 97 – 120)

⁴⁰ PAC3 Main Consultation Document 5.8.1 (page 121)

⁴¹ Examination Library reference AoC-001 and AoC-002

parameter plans has presented would not currently allow for the flexibility required to deliver an alternative layout of the type suggested and IACC would like to see this option retained. Requirement WN20 and parameter table WN20 will require to be amended to allow for a mix of building heights to facilitate intermediate height buildings.

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