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Subject: Proposed Development Consent Order at Wylfa Newydd - Deadline 7 submission from NWP
Date: 14 March 2019 22:50:39
Attachments: [image001.png](#)
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[image005.png](#)
[27102 A3 140319 NWP Deadline 7 Submission \(SUBMITTED\).pdf](#)
Importance: High

Kay

I am pleased to enclose, on behalf of North Wales Police, submissions for Deadline 7. This includes the following:

- Written Summary of Oral Submissions from the Issue Specific Hearing on 6th March 2019 on the draft Development Consent Order; and
- Representations on Specific Sections of the draft of the Section 106 Agreement.

I look forward to hearing from you with confirmation of receipt of this submission.

Many thanks and kind regards

Ben

Ben Lewis
Infrastructure and Energy Director



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By email only

Our Ref: 27102/A3/BL/D7/190313
14th March 2019

Dear Kay,

The Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010
Application by Horizon Nuclear Power for an Order Granting Development Consent for the Wylfa Newydd Nuclear Power Station (Ref: EN010007)

Submissions for Deadline 7

Further to the submissions made at Deadlines 5 and 6, and in our letter dated 1st March 2019, we write on behalf of our clients, North Wales Police (NWP), to provide submissions for Deadline 7. These submissions build on the submissions made in our letter of 1st March 2019 which remain relevant. The enclosed submissions are as follows:

- Written summary of Oral Submissions from the Issue Specific Hearing on 6th March 2019 on the draft Development Consent Order (appended to this letter);
- Representations on Specific Sections of the draft of the Section 106 Agreement (appended to this letter).

Within this letter, we also provide:

- Initial comments on the draft Code of Construction Practice (CoCP) (Ref: REP5-020) submitted by the Applicant at Deadline 5;
- further commentary on the Applicant's Deadline 5 submission 'Horizon's Response to North Wales Police Examination Submissions' (Ref: REP5-088), and in particular, Appendix 1-1 to that submission, and its Deadline 6 submission cover letter (Ref: REP6-001); and



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- an overview of the recent discussions between NWP and the Applicant and the position reached in relation to the draft s106 agreement, including an explanation of the National Police Chiefs Council (NPCC) National Policing Guidelines on Charging for Police Services which was agreed by both the Applicant and NWP as the appropriate charging methodology for the assessment of impact on NWP.

Horizon Nuclear Power: Deadline 5 Submission - Draft CoCP (Ref: REP5-020)

We have reviewed the updated draft CoCP (Ref: REP5-020) submitted by the applicant at Deadline 5. NWP considers that a number of improvements have been made to the CoCP on previous drafts. However, there remain concerns over the level of detail provided in certain sections and the way Light Goods Vehicles (LGVs) are treated in the logistics management strategy.

It is noted at para. 5.2.1 of Revision 3.0 of the Code of Construction Practice¹, that the role of the Logistics Centre has changed and it will now only “control the flow of HGVs” rather than as per previous versions “the flow of goods vehicles”. Additionally, at para. 5.2.2 the requirement for LGVs to pass through the Logistics Centre has also been removed.

The Strategic Traffic Model² is based on the assumption that all HGV and LGV trips associated with the WNDA development construction activity (including construction of the Site Campus) are routed via the Logistics Centre and that LGV numbers would be equivalent to 25% of the workers on-site.

This raises significant concerns for NWP because the volume of LGVs during construction will be significant and without the necessary controls in place the risk of vehicles “rat running” and subsequent risks to local communities is greatly increased. NWP would question whether this alternative scenario has been tested and the potential impacts measured within the Applicant’s application.

NWP is, however, aware that the Applicant is proposing to submit a further revision to the draft CoCP at Deadline 7. NWP will undertake a further review of the draft CoCP that will be submitted at Deadline 7 and provide any further comments that may be necessary at Deadline 8.

Horizon Nuclear Power: Deadline 5 Submission - Response to North Wales Police Examination Submissions, Appendix 1-1

Appendix 1-1 was prepared on behalf of the Applicant by Gore Associates. At para. 1.4.26, its states:

“It is suggested that all costs are calculated using the full cost recovery model, which incorporates contributions to all support costs.”

The NPCC’s Guidelines on Charging for Police Services- July 2018 document provides the national guidance on charging and has been adopted by, Police Forces in England, Wales & Northern Ireland. Within the guidance, a standard methodology is prescribed along with an example calculation from September 2017 onwards. It states

“Each Force is required to update the above calculation to reflect their Force position for the current financial year. The special policing services guidance describes a standard method for the calculation the charges and their application.

¹ REP5-021 - Deadline 5 Submission - 8.6 Wylfa Newydd Code of Construction Practice (Track Change Version - Revision 3.0 against Revision 2.0)

² App-108 - 6.3.21 ES Volume C - Road traffic-related effects (project-wide) App C2-4 - DCO TA Appendix G - Strategic Traffic Model - Overview

The actual rates charged will differ for each force, based upon costs within that specific force.”

The costs used by “Gore Associates Review of North Wales Police Impact Assessment” (Appendix 1-1, REP5-088) have not taken into account the local force position. In addition, the costs used for Constable, Sergeant and PCSO by Gore Associates in their assessment appear to be predicated on 17/18 Cost of Police Services (not 2018/19). Additionally, the costs for Constables appears to be based on Resource/Operational Cost (not full economic costs), and costs for Sergeants appear to be based on Resource/Operational Cost less £2,000 (not full economic costs), whereas costs for PCSOs appear to be based on Full Economic Costs.

Based on the resources proposed by Gore Associates at para. 1.4.47 of its Assessment and correcting the costs to the local 18/19 rates, would lead to costs of £8.3 million rather than the £6.17 million shown at para 1.4.49. To be clear, NWP does not agree with the resourcing model proposed in REP5-088.

NWP notes that the Applicant has included a further response to NWP in Appendix 2 to the cover letter submitted at Deadline 6 (Ref: REP6-001). NWP has identified a number of factually inaccurate and/or misleading statements within that response and comments as follows:

- Para 1.1.2 – Horizon often requested meetings either be held or be rearranged at very short notice and any invitations that were declined were simply as a result of the required NWP staff having prior commitments on the dates requested by the Applicant;
- Para 1.1.4 – the data provided by NWP to Gore Associates did include an error and this was subsequently rectified by NWP and updated data sets were provided to the Applicant on 28th January 2019. All subsequent requests by Gore Associates for data from NWP have been met;
- Para. 1.1.5 and 1.1.6 – NWP remains of the view that its PIA is robust and that Gore Associates has misunderstood how NWP has reached its conclusions. NWP has produced its assessment utilising the significant skills and experience of its Officers and Analysts who have an unparalleled knowledge of Anglesey and North Wales and how those areas should be policed. Nothing has been produced by Gore Associates that in anyway diminishes this position. To demonstrate this, NWP has submitted, at Annex 3 to its submissions made on 1 March 2019, a comparison between the NWP methodology and Gore methodology for the Panel.

Dialogue between NWP and HNP in relation to the draft DCO s106

We can confirm that NWP met with the Applicant and Gore Associates on 4th March 2019. Discussions at the meeting were open and allowed both sides to discuss each element of the assessment process and agree a way forward with respect to the assessment and the quantum of mitigation proposed in the s106 agreement. Agreement was reached on the morning 4th March 2019. However, the next day, NWP was contacted by the Applicant and advised that they would be renegeing on that agreement. In the interests of clarity, we set out below an overview of the meeting so that the Examining Authority is fully cognisant of proceedings.

The first point of discussion at the meeting related to the charging methodology. Agreement was reached by all parties, as suggested by Gore Associates, that the full economic cost methodology would be utilised. This is based on the provisions of the NPCC National Policing Guidelines on Charging for Police Services. As was stated earlier in the letter, the Guidelines require that

adjustments are made to the costs provided to account for the local characteristics and circumstances of the force's area. NWP shared its Full Economic Costs charging for 2018/19 - using the NPCC National Policing Guidelines – with the Applicant at the 4th March 2019 meeting. This was provided to the Applicant and Gore Associates by email following the meeting.

Once the charging structure was agreed, a revised model based on the agreed costing methodology was agreed in principle with the Applicant and Gore Associates at the meeting taking account of the proposed ramping up and down of workers over the years of the construction project. These figures were then used in conjunction with NPCC's charging deadlines to produce a final quantum for the s106 agreement. Applying this charging structure, corrected to reflect local circumstances as per the Guidelines, to an agreed level of FTE Officer provision over the construction life of the project, identified a cost of £11.2 million.

NWP is cognisant of the financial difficulties encountered by the Applicant and future lack of funding, and in this light offered to accept the contribution of £11.2 m, effectively shouldering some of the financial burden encountered by the scheme (acknowledging that NWP would effectively be undertaking mitigation that should be borne by the Applicant). This allowed for the quantum requested to be agreed at £11.2m on the assumption that this complied with the calculation, and associated local force adjustments, required by Appendix 4 of the National Police Crime Commissioner's Guidelines on Charging for police services. The compromise offered by NWP was welcomed by the Applicant and it was agreed that this would form the basis of the s106 agreement, subject to localised adjustment. Notwithstanding the agreement reached at the meeting, the Applicant has subsequently confirmed that it will not formally agree to this quantum – a revised figure of £8.45m was proposed by the Applicant on 5th March based on a funding formula presented in REP5-088. As set out above, this formula is out of date and does not include the local variation that has to be applied as per the Guidelines.

NWP remains of the view that its impact assessment is justifiable, quantifiable and properly evidenced. NWP made it completely clear to the Applicant at the 4th March meeting that £11.2m would be the absolute minimum quantum that it could accept in connection with the project without compromising public safety and its ability to effectively deliver its statutory functions. This is compounded by the real uncertainty over the delivery of the proposed development.

Fundamentally, the agreement reached on 4th March represents a significant compromise by NWP and demonstrates its willingness to work with the Applicant to share risk and identify a mutually agreeable solution. Clearly, the £11.2m agreed is a long way short of the £29.3m contribution that NWP has evidenced is necessary.

In light of this, should the Applicant not submit a draft s106 agreement that reflects the agreed quantum, then NWP request that the Examining Authority adjudicates on the quantum to be provided to NWP. This quantum must fall between the identified requirement of £29.3m and the absolute minimum contribution of £11.2m. The current quantum proposed by the Applicant within the draft s106 agreement of £6.17m is wholly unacceptable, as is the £8.45m proposed by the Applicant on 5th March 2019. NWP submits that if mitigation is not properly secured for the purposes of the project, the impact on community safety will be unacceptable and constitutes an unacceptable risk, such that NWP does not feel it will be able to properly protect the public.

NWP is currently preparing a marked-up version of the draft s106 and this will be submitted to the Examination in advance of Deadline 8. In the event that agreement is not reached with respect to

the DCO s106 agreement, NWP will submit appropriate wording to secure the necessary contribution through the DCO before the end of the Examination.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely,



Ben Lewis

Infrastructure & Energy Director

Appendix 1: Written summary of Oral Submissions from the Issue Specific Hearing on 6th March 2019 on the draft Development Consent Order

WYLFA NEWYDD - NORTH WALES POLICE

WRITTEN SUMMARY OF ORAL SUBMISSIONS FOR THIRD ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER

1. INTRODUCTION

- 1.1 This note summarises the submissions made by NWP at the ISH on 6 March 2019.
- 1.2 More detailed submissions, all of which are still valid and at present maintained, were submitted on 1 March 2019 and labelled Annex One, Two and Three respectively and appended to a covering letter. This oral submission should be reviewed with those written submissions, and other drafting and information provided by NWP for Deadline 7.

2. QUANTUM AND PURPOSE OF MITIGATION (SCHEDULE 9 OF THE S106 AGREEMENT)

- 2.1 North Wales Police and the Applicant met on 24 January 2019 with the Applicant's expert on policing matters, Gore Associates. Another meeting took place on 4 March 2019 to discuss the position between the parties and ways that an agreement relating to the methodology of the mitigation (and therefore the quantum) could be reached.
- 2.2 NWP and the Applicant left that meeting on 4 March 2019 with an agreed position on the calculation of mitigation proposed. Since that meeting has taken place, the Applicant has discussed the provisionally agreed sum with the wider team and has reneged on the agreement mitigation quantum. The current mitigation quantum offered is unacceptable to NWP.
- 2.3 Chief Superintendent Harrison summarised these negotiations in a short speaking note during the course of the ISH, which is provided at Annex One of this summary.
- 2.4 The Chief Superintendent also confirmed at the ISH the conversation that took place on 4 March 2019 was open and frank. NWP reviewed the assessment work undertaken and, cognisant of the financial difficulties encountered by the Applicant and future lack of funding, clearly stated that, if NWP shouldered some of the financial burden encountered by the scheme (acknowledging that NWP would effectively be undertaking mitigation that should be borne by the Applicant) the quantum requested could be lowered. At the ISH, NWP confirmed that this lowest possible acceptable quantum could stand at £11.2m, however only if this complied with the calculation, and associated local force adjustments, required by Appendix 4 of the National Police Chiefs' Council National Policing Guidelines on Charging for police services.
- 2.5 Fundamentally, NWP submit in the strongest terms that the mitigation sought by them is justifiable, quantifiable and properly evidenced. Nothing that has been produced by Gore Associates in anyway diminishes this position. To demonstrate this, NWP has submitted, at Annex 3 to its submissions made on 1 March 2019, a comparison between the NWP methodology and Gore methodology for the Panel.
- 2.6 If HNP will not keep to the initial agreement reached on 4 March 2019, which was undertaken openly and in good faith, and therefore - as HNP will know - is the lowest NWP are possibly able to accept as a level of quantum, agreement cannot be reached.
- 2.7 In the event of agreement not being reached, NWP would ask of the panel that there is a need to adjudicate on this specific matter. This would therefore involve making a decision on the basis of the information in front of the Panel. NWP submit that if mitigation is not properly secured for the purposes of the project, the impact on community safety will be unacceptable and constitutes an unacceptable risk, such that NWP do not feel they will be able to properly protect the public. Ultimately they understand, and know, what they consider is required to do their job properly.
- 2.8 Furthermore, absent any agreement NWP will submit suitable drafting that provides the necessary mitigation required for inclusion within the Development Consent Order. NWP will also provide submissions on the legality and acceptability of such drafting and the way that the section

106 obligation wording would need to be dealt with, in order to assist. NWP will seek to reach agreement with the Applicant and would propose to submit such wording at the end of Examination (the final deadline) if agreement cannot be reached.

3. DEED OF COVENANT (SECTION 7 SECTION 106 AGREEMENT)

- 3.1 A Deed of Covenant is proposed with NWP in order to ensure there is a direct contractual relationship between NWP and HNP and IACC.
- 3.2 NWP has always been very clear with both HNP and IACC that if being a signatory to the section 106 agreement was not possible, NWP would require a negotiated Deed of Covenant with the parties. This document was only finally received two weeks ago. It at the moment is not suitable for the provisions NWP seeks and as such is not fit for purpose.
- 3.3 HNP have also submitted previously, and as far as we are aware continued to submit, representations that they should be a party to the Deed of Covenant. On 1 March 2019 NWP submitted Annex One to its covering letter providing summary submissions on the draft Deed of Covenant and NWP draw the Panel's attention to that document for their review.
- 3.4 Discussions have taken place with IACC's legal team and a meeting has been arranged for 15 March 2019 to discuss necessary drafting. Put simply, NWP understand that IACC are amenable to discussions on a draft Deed of Covenant and to consider wording to be included in that document, which is robust and fit for purpose for NWP. NWP hopes some form of agreement on suitable wording can be reached.
- 3.5 To cite but one example as to why amendments to the current draft are indeed required, NWP has been discussing with IACC a specific method of payment that works for all parties and is acceptable. The fact that these specific nuanced discussions had been taking place is just one example of the bespoke drafting that is required in such a document.
- 3.6 The wording in the Section 106 obligation relating to the Deed of Covenant at clause 7.4 is completely unacceptable for several reasons, the first of which being that NWP cannot see how it is Regulation 122 compliant to allow parties to agree alternative mitigation if they cannot enter into a Deed of Covenant. Secondly, simply using "reasonable endeavours" for what is secured payment for mitigation is also unacceptable. Ordinarily, this document would be negotiated alongside the Section 106 Agreement. NWP submit that one cannot be considered without the other.
- 3.7 Finally – and most concerning of all - what NWP has at the moment is a Deed of Covenant that affords IACC an unnecessary and unreasonable degree of control and, if NWP do not enter into that Deed of Covenant, mitigation could be re-negotiated on the basis of the current drafting. That is a ransom situation and is unacceptable. It is however understood from IACC that it is not the intention to create this final position within the section 106 obligation drafting and this can be discussed and it is hoped reworded. NWP are meeting on 15 March 2019 to discuss this and other matters relating to the Deed of Covenant with IACC.

4. ESEG (PARAGRAPH 4 OF SCHEDULE 9)

- 4.1 On the role of the Emergency Services Engagement Group (ESEG), there has been movement between the blue light services and the Applicant. Nonetheless, three principle points remain in dispute:
 - 4.1.1 The first and most important point is the constitution of ESEG. This needs to be limited to the emergency services (the blue light services). It at the moment includes the Applicant, the Welsh Government and IACC. As to the Applicant being a party, it cannot be considered proper, or fair, that the developer consults with itself. IACC approve all final plans put before them as discharging authority. The only relevant point on emergency services overlap potentially for Welsh Government and NWP is the Abnormal Indivisible Load (AIL) Management Plan and they are consulted on that

separately. At the ISH on the draft DCO, NWP accepted the inclusion of an independent chairperson to lead ESEG, if the Panel considered that to be necessary and proportionate.

4.1.2 Secondly, the role of ESEG needs to be properly and robustly defined in the Section 106 Agreement. Particularly, it is imperative that ESEG acts as an ongoing advisory body that is able to provide constructive input to IACC and HNP throughout the construction and operation of the scheme. NWP do not see this as contentious but the principle point is that this is not limited to very specific documents and plans when NWP has always maintained the importance of the group in relation to all community safety matters that fall within the blue light remit.

4.1.3 NWP had understood, following meetings with the Applicant, that there would be a pre-approval mechanism in the section 106, prior to the document going to IACC. This requires the Applicant and ESEG to meet and discuss, and agree, the content of certain plans. Some wording has been proposed that is under discussion. The agreement of this wording is of paramount importance. That needs to relate to not only the four plans referenced in the section 106 agreement but, very importantly, the code of construction practice and the construction traffic management strategy and other documents, only to the extent it may impact on ESEG. This is not asking for any sort of role on the face of the DCO, simply for it to be stated clearly in the Section 106 and to allow consultation to explicitly take place. Again, this is not considered controversial. In addition, that consultation needs to continue if there are future changes made to those aforementioned plans.

5. SAFEGUARDING

5.1 NWP are content in relation to the measures proposed for health and wellbeing, subject to the important points below relating to mitigation.

5.2 Safeguarding is included in three places in the section 106 agreement but reference to NWP's role in safeguarding is absent. Safeguarding is a core policing duty of NWP and it is imperative that NWP have requisite involvement in any consultation, review or consideration of safeguarding measures contained at Schedule 5, Schedule 6 and Schedule 8. The definition of safeguarding is also incorrect and needs to explicitly refer to the correct definition, which will be provided by NWP to HNP in due course.

5.3 It is not difficult to rectify – the North Wales Safeguarding Board already exists to consider safeguarding measures. Failing this board being specifically mentioned, ESEG should be consulted at the point at which these measures are being considered and implemented.

6. SECURITY AND FUNDING

6.1 NWP has raised concerns at a number of previous Deadlines regarding the funding of the project following its suspension by Hitachi. Particularly, NWP requires necessary comfort that if the project is implemented the developer has the necessary funding available to mitigate the impacts of the scheme properly. Furthermore, there should be a need to demonstrate that there is the necessary finances available to not only implement the scheme, but to construct it in its entirety.

6.2 NWP notes the additional article 84 proposed by HNP for inclusion in the DCO drafting which addresses funding and requires confirmation from the Secretary of State that the necessary funding is in place, however it is observed that it does not seem to secure any of the mitigation funding set out in the DCO S106.

6.3 NWP's main concern is that HNP or another undertaker could commence development, but then be unable to fund the annual payments due to the police past a certain point, for example, year 2. At this point, IACC has a discretion whether to take enforcement action and if it decides not to take action, NWP has no recourse against the developer.

6.4 Article 84 states: "*the undertaker has provided the Secretary of State with written information to enable the Secretary of State to be satisfied that the authorised development is likely to be undertaken and will not be prevented due to difficulties in sourcing and securing the necessary funding*" (our emphasis). This phrase is taken from the Guidance related to procedures for the compulsory acquisition of land and refers specifically to the information necessarily available in a funding statement to demonstrate compulsory acquisition powers. NWP questions whether the wording in its current form also considers onward financing of the project. It would be far more robust to specify the evidence that should be contained within such a document within the article and to not limit it simply to the test of that relating to a funding statement. The developer should be required to evidence how it will obtain all necessary funding for the building out of the project in its entirety.

6.5 Precedent for this approach can be found in the Glyn Rhonwy Pumped Storage Generating Station Order (2017) under Requirement 20(7)(c)¹, which secures the submission of an outline decommissioning plan prior to the commencement of construction to the relevant planning authority for approval. The Glyn Rhonwy generating station has a proposed operational life of 124 years and notwithstanding this, the Undertaker is required to demonstrate prior to the commencement of construction how funding for decommissioning will be secured. It is NWP's view that a similar text should be applied to Wylfa Newydd, not least given the current uncertainty over the project's delivery and the significant risk posed if the project is commenced and then subsequently abandoned mid-construction. This is not in any way to suggest that funding should be available at that present time, which would clearly be impossible in the circumstances. Rather, an explanation as to how the funds will be procured, or used, over the lifetime of the project (including mitigation payments) would provide the Secretary of State with the necessary comfort that the project will be deliverable.

¹ (7) *The Undertaker must submit to the relevant planning authority an outline decommissioning plan for approval by the relevant planning authority before construction of the works listed in Part 1 of Schedule 1 (authorised development) to this Order can be commenced and must:*
(a) identify the nature of the decommissioning works to be undertaken;
(b) include the anticipated timetable for implementation of decommissioning; and
(c) demonstrate how the funding for decommissioning is secured.

ANNEX 1

**Submission made by Nigel Harrison, Chief Superintendent at the
Issue Specific Hearing on 6 March 2019**

We, North Wales Police, produced a very detailed and evidenced based assessment of what it believes will be the impact of the development on the requirements to maintain an appropriate level of policing. Throughout the process, it has been transparent in dealing with HNP and were and still are more than willing to negotiate in relation to mitigation should an equally evidenced based approach be proposed.

The Police Impact Assessment was submitted at deadline 2, but to date there is nothing that has been produced and evidenced to give any confidence in a better model being suggested in relation to the core local policing requirements, NWP do not agree what has been proposed initially by Horizon's policing consultants.

In addition we have repeatedly been assured that a detailed construction phase traffic management strategy would be produced, which NWP were hopeful would mitigate much of the roads policing requirements. This has not happened.

We were also given assurances by Horizon's that they would provide us with information on the range of services and measures they would undertake to mitigate the impact on the police. We haven't received anything to date. This thus leaves us to solely rely on our own assessment based on submissions made to this process. That said in the interests of progress and flexibility shown by us we this week came to a verbal understanding of an appropriate resourcing requirements having agreed the correct and most appropriate funding formula accepting that it need to be further discussed within Horizon. The funding formula is intrinsically linked to the resource that is agreed and are not mutually exclusive. One cannot be agreed without the other. We showed a huge amount of understanding of Horizons current position and as such were prepared to shoulder the real risk because of the lack of detail of mitigation on their behalf that has been provided. We have been incredibly flexible and have made real efforts to find a way forward in the most recent meeting which was open and frank. Horizon have now come back and, contrary to the meeting on Monday, not formally agreed the way that resource should be funded at 15.43 hrs yesterday, based on a funding formula we believe was provided to them by their policing consultants. The formula suggested to be used by Horizon is in our view out of date and does not include the local variation that has to be applied as per National Police Chief Council's Guidance. We simply cannot go any lower with the requirement than what was discussed in the last few days, this is absolute minimum that will afford us to mitigate against the impacts of this development also recognising the police service will need to shoulder some of the burden. Anything less has the potential to compromise public safety without further evidence based mitigation. Given the real uncertainty of this development moving forward this compounds my concerns around mitigation. We have stood ready to negotiate on all occasions and have fully engaged with the process. So to make absolutely clear at this point today we now must rely on original submissions. However we are prepared to continue to have discussions with Horizon in relation to our position we anticipate these discussions will take place at pace as the relationship remains positive.

We are able to report progress in relation to control of documents which are legal representatives will touch further on. Further negotiation is now difficult as Horizon are no longer supporting the police financially moving forward which is a real equality issue and is thus now coming from the public purse as the risk of not having appropriate legal advice or support again leaves the public service vulnerable in the future.

As it stands today there is no agreement on the resourcing requirement that will support the police in mitigating the threats posed by this development, without mitigation we believe that there is a real risk that demand will outstrip resource which potentially leaves the public at significant risk. In making this submission I am conscious of my positive duty under Article 2 European Convention of Human Rights as is the case for all public bodies. I would ask the Examining Authority to carefully consider our representations should agreement not be reached.

Appendix 2: Representations on Specific Sections of the draft of the Section 106 Agreement

WYLFA NEWYDD NUCLEAR POWER STATION (PROJECT)

SPECIFIC DRAFTING POINTS: NORTH WALES POLICE (NWP) NOTE ON DCO SECTION 106 AGREEMENT FOR DEADLINE 7

1. BACKGROUND

1.1 Detailed representations were submitted by NWP on 1 March in advance of the Issue Specific hearing on 6 March 2019 on the DCO Section 106 Agreement (**DCO S106**). The parties are still negotiating the drafting, but there are a few updates to inform the Examining Authority of.

2. NEW CLAUSE 7.4

2.1 In the Deadline 6 version of the DCO S106 a new clause 7.4 was inserted which reads as follows:

If after using reasonable endeavours the Council is unable to enter into a Deed of Covenant with any third party prior to the date when the payment is due the Council shall have no obligation to transfer the relevant Contribution to that third party and shall within 20 Working Days meet with the third party and the Developer to determine alternative delivery of the relevant service or an alternative mitigation.

2.2 This wording is entirely inappropriate as it undermines the purpose of the section 106 agreement. It is itself a tailpiece and effectively allows the local planning authority to retain funds and alter the mitigation due to a third party unilaterally without entering into a deed of variation. A third party such as NWP will have no recourse if the Council refuses to negotiate the wording in the Deed of Covenant, which in its current form is entirely unacceptable to NWP, and withhold funds on that basis. It is difficult to see why the Council and the Developer should be entitled to decide on alternative mitigation when the Secretary of State's decision to grant the DCO has been made on the basis of the mitigation set out in the final form of the DCO S106. North Wales Police have been in active discussions with IACC about such wording and it is anticipated that these concerns can be resolved.

2.3 Regarding the Deed of Covenant, NWP have proposed the following in the latest draft of the DCO S106 (Clause 7):

Where any payments identified in the Schedules to this Deed are stated to be payable

*by the Council for onward transfer to a third party (a "**third party**"), the Council shall:*

7.1.1 use reasonable endeavours to enter into a Deed of Covenant with each of the third parties and the Developer as soon as reasonably practicable prior to Commencement.

7.1.2 Provide the Developer with copies of each Deed of Covenant entered into within 10 Working Days of completion;

7.1.3 Prior to entry into Deed of Covenant, provide the Developer with updates where reasonably requested as to progress on agreeing Deeds of Covenant.

7.2 The Parties agree that the Deeds of Covenant shall be substantially in the form attached at [Schedule 18] and shall contain the following minimum requirements:

7.2.1 An obligation on the Council to pay monies received under this Deed for the benefit of a third party to that third party immediately and which must not exceed one Working Day.

7.2.2 An obligation on the third party to spend the monies received in the manner described in this Deed.

7.2.3 *An obligation to repay the monies to the Council within nine years and eleven months if they are either not spent or in the reasonable opinion of the Council not spent for the purposes for which they were paid under this Deed.*

7.2.4 *Regular and timely reporting obligations on how the monies are being applied which will enable the Council to comply with its reporting and monitoring obligations under this Deed.*

7.2.5 *Grant the Developer the right to take conduct in the place of the Council to enforce a breach of or non-performance by the third party under the Deed of Covenant if the Council has not done so within a specified period of time.*

7.2.6 *A suitable dispute resolution clause.*

7.2.7 *A clause enabling any clause in the Deed of Covenant to be struck out if found to be unlawful.*

And in relation to North Wales Police only:

7.2.8 *An obligation on the Developer to adjust the Emergency Service (Police) Contribution in accordance with Schedule 9 if there is a delay in the construction programme and construction continues beyond the final payment due pursuant to Schedule 9 paragraph 3.1.10.*

7.2.9. *An obligation on the Developer to revise an annual payment forming part of the Emergency Service (Police) Contribution with North Wales Police if the predicted numbers of Non Homebased Workforce for the next year are higher than the anticipated numbers used to calculate the Emergency Service (Police) Contribution.*

7.2.10 *An obligation on the Developer to adjust the Emergency Service (Police) Contribution in accordance with a revised Police Impact Assessment if the monitoring data shows worse impacts to the worst case scenario set out in the Application.*

7.2.8 *An obligation on the Developer and the Council to provide the monitoring data to North Wales Police in accordance with Schedules 5 and 7 of this Deed*

7.3 *In the event that a third party is in breach of the minimum requirements described in clause [7.2.1 and 7.2.2] above of its Deed of Covenant, the Council shall use all reasonable endeavours to effect the return of those monies to the Council (including enforcing the Deed of Covenant) who will then be obliged to treat those monies in accordance with schedule 16*

7.4 *If after using all reasonable endeavours the Council is unable to enter into a Deed of Covenant with North Wales Police, Welsh Ambulance Service Trust or North Wales Fire Service prior to the date when the payment is due, the Council must work with North Wales Police or North Wales Fire Service to agree some other method of securing the provisions in clause 7.2:*

2.3.1 7.5 *Excluding the North Wales Police, Welsh Ambulance Service Trust and North Wales Fire Service, if after using reasonable endeavours the Council is unable to enter into a Deed of Covenant with any third party prior to date when the payment is due the Council shall have no obligation to transfer the relevant Contribution to that third party and shall within 20 Working Days meet with the third party and the Developer to determine alternative delivery of the relevant service or an alternative mitigation.*

3. THE THIRD PARTY DRAFTING WORDING

3.1 Given the inclusion of the new clause 7.4 and the fact that the Council's form of Deed of Covenant is entirely unacceptable, NWP submit that it should be expressly entitled to enforce any obligation in paragraphs 3 and 4 of Schedule 9 as a third party, as permitted by the Contracts (Rights of Third Parties) Act 1999. This wording should be included in clause 22 of the DCO S106. NWP have proposed the following draft wording in the latest version of the section 106 agreement:

22.2 Nothing in this Deed will prevent North Wales Police enforcing any obligations set out in paragraphs 3 and 4 of Schedule 9 in spite of the fact that North Wales Police is not a party to this Deed.

4. SAFEGUARDING DRAFTING AND WORDING

4.1 The DCO S106 contains various references to safeguarding. As there is an existing North Wales Safeguarding Board (**NWSB**), on which NWP is represented, rather than having decision about safeguarding made by other unrelated engagement boards, it is NWP's view that any issue relating to safeguarding should be referred to the NWSB for consideration. The references in the DCO S106 are as follows:

4.1.1 Schedule 5 paragraph 5.2 – Accommodation officers must monitor and manage via engagement with the WAMS Oversight Board and with the Developer, the placement of non-home based members of the Workforce to ensure that placement with vulnerable persons is avoided and other Safeguarding measures are appropriately considered.

4.1.2 Schedule 6 paragraph 4.3.2 – the Education (Contingency) Fund may be used for funding associated support services for Local Schools or state schools operating in Gwynedd or Conwy in respect of matters relating to Safeguarding.

4.1.3 Schedule 8 paragraph 6.4 – the roles of the Health and Wellbeing Engagement Group include Safeguarding vulnerable adults and children.

4.1.4 Schedule 13 – the role of Community Involvement Officers in Supporting the Council and associated services in terms of Safeguarding matters arising from the Wylfa Newydd DCO Project (paragraph 1.3.14).

5. REVISED ASSESSMENT CALCULATIONS

5.1 At the last meeting between HNP and NWP (on 4th March 2019) a s106 contribution of £11.2 million was provisionally agreed between both parties. HNP has subsequently stated that this figure is not agreed, but nonetheless NWP has prepared revised formulas and tables that reflect this figure for inclusion in the DCO s106 agreement. It should be reiterated that £11.2m is the absolute minimum figure that NWP can accept.

5.2 Payment Profile

5.3 Payment is required in advance at beginning of each financial year based on £11.2 million with the following profile:

Function	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
	£k	£k	£k	£k	£k	£k	£k	£k	£k	£k
Sergeant	£114.5	£114.5	£114.5	£114.5	£114.5	£114.5	£114.5	£114.5	£114.5	£114.5
Constable	£484.67	£775.47	£1,066.28	£1,260.15	£1,454.01	£1,454.01	£1,357.08	£1,066.28	£678.54	£484.67
Total	£599.2	£890.0	£1,180.8	£1,374.7	£1,568.5	£1,568.5	£1,471.6	£1,180.8	£793.1	£599.2

5.4 At the beginning of the following years NWP would require the following payments:

- Year 0 - £599.2k
- Year 1 - £890k
- Year 2 - £1,180.8k
- Year 3 - £1,374.7k
- Year 4 - £1,568.5k
- Year 5 - £1,568.5k
- Year 6 - £1,471.6k
- Year 7 - £1,180.8k
- Year 8 - £793.1k
- Year 9 - £599.2k

5.5 Extending Construction Timelines

Function	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Sergeant	1	1	1	1	1	1	1	1	1	1
Constable	5	8	11	13	15	15	14	11	7	5
Total	6	9	12	14	16	16	15	12	8	6

5.6 The workforce numbers as presented in the DCO Application documentation showed a timeline where workforce numbers "ramped" up and down over a ten year period. As part of the resourcing modelling NWP has built in:

- A lead time for the recruitment and training of officers
- Exit timeline in terms of reducing the workforce numbers.

5.7 The funding model is predicated on a core of 6 members of staff irrespective of population numbers covering Operations Planning, RPU, Safeguarding, Intelligence and Supervisory up to maximum population of 699.

5.8 It thereafter has an increase of 1fte per increase of 700 in workforce numbers

- 700-1399 – 1 Constable
- 1400-2099 – 2 Constable

and so on.

5.9 If the construction timeline was extended, the force would thus be looking to secure the following mitigation:

- A total of 1 Sergeant and 5 Constables for any workforce numbers between 1-699
- An increase of 1fte per further 700 in workforce numbers:
 - 700-1399 – 1 Constable
 - 1400-2099 – 2 Constable

and so on.

5.10 Cessation of Build

5.11 For both of the models, NWP's initial evaluation of £29.2m and the subsequent £11.2m agreed at the 4th March meeting, the following holds true – NWP will need to build in both a lead and exit timeline of 12 months if:

- The project construction ceases for a period of time; or
- a project build programme is amended so that the level of workforce fluctuates at various times during the project build

5.12 This is illustrated in the below example scenario.

Example

If a project had a workforce of 7,000 and the project was put on hold for a period of two years and then recommenced with the same workforce numbers, given that the force require both a twelve month exit and lead time then in essence it would need to maintain the existing resourcing for that two year period.

Using the £11.2 million model and following scenario

- Project put on hold in Year 4 with a workforce of 7,000
- Project recommenced in two years' time with a workforce of 7,000
- In Year 4 the force has a total of 16 officers dedicated to the project
- The force would require a period of twelve months to reduce workforce numbers but in twelve months' time it would need to commence recruit and train sixteen officers as per the resourcing model.
- Thus under such a scenario the cost for the two years cessation would remain the same as Year 4.

If the project was put on hold for a period of longer than a two year duration then the period post 12 month exit period and pre 12 month lead time would not incur any costs.

If the workforce number post cessation was to increase or decrease then the officers required taking into consideration the lead time would need to be:

- £11.2 million model – Core of 6 plus 1 fte per 700 workforce
- £29.2 million model – The methodology in the impact assessment would need to be applied

Scenario where actual workforce numbers less than modelled

If workforce numbers retrospectively were found to be less than modelled there would be no reimbursement as the force would have recruited and resourced at a level agreed and thus incurred the costs.

Any reduction would require the developer to provide twelve months' notice in advance and evidence that the workforce numbers are reducing.