

Wylfa Newydd Project

3.1 Development Consent Order Outstanding Issues Register

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1 Remaining areas of contention

1.1 Introduction

- 1.1.1 This document outlines the remaining points of contention between Horizon and Interested Parties in respect of the draft DCO, as set out in representations.
- 1.1.2 It does not purport to be a complete list, as Horizon has only been able to identify those issues that have been set out in Deadline submissions or raised directly with Horizon. It also does not seek to set out remaining concerns in respect of the control documents.
- 1.1.3 This document should be read in conjunction with the Summary Table of DCO Amendments and the draft DCO submitted at Deadline 8 which has accepted a number of requests by Interested Parties in respect of the DCO drafting since the last update of the draft DCO at Deadline 5 [REP5-003]. The matters that have not been accepted by Horizon are set out below.
- 1.1.4 A sign-posting table has been included as **Appendix 1** which provides a high-level overview of the remaining issues and where Horizon's response can be found within this document.

1.2 DCO Articles

Article 2 – Interpretation

"commence"

Temporary buildings and structures

- 1.2.1 In its Deadline 5 and Deadline 7 submissions [REP5-057], IACC raised concerns about the height of temporary structures and buildings on associated development sites during construction and the fact that these were not restricted in anyway.
- 1.2.2 In the final DCO submitted at Deadline 8, Horizon has amended paragraph (j) of the definition of "commence" to specify that temporary buildings on the Off-Site Power Station Facilities, the Park and Ride facility, the Logistics Centre, the A5025 Off-Line Highway Improvements Works, and Ecological Compensation Sites are restricted to a height of 2 storeys.
- 1.2.3 Horizon assumes this now resolves IACC's concerns; however, it acknowledges that IACC has not had the opportunity to comment on the amendments.

Scope of definition

- 1.2.4 In response to SWQ2.4.3 [REP5-057], IACC noted that the scope of the excluded works under the definition was not appropriate. IACC has not raised this issue again in its Deadline 6 or 7 submissions.
- 1.2.5 Horizon maintains its position as set out in its response to IACC's Written Representation [REP3-019] and at the October and January DCO Issue

Specific Hearings (ISH) [REP1-003/REP4-004] that all the works listed are necessary for preparatory and site establishment activities.

"discharging authority"

- 1.2.6 During the March ISHs, NRW and IACC released a joint paper on the arrangements for the discharging authority for Marine Requirements within the DCO (attached as **Appendix 2**). Horizon is in principle comfortable with the approach and has made amendments within the final DCO submitted at Deadline 8; however, this is subject to the terms of a Memorandum of Understanding (MOU) to be developed between the parties as to how the arrangements will work in practice.
- 1.2.7 Horizon has not seen a draft of the proposed MOU and so has not had the opportunity to comment on the mechanisms proposed to manage the relationship between IACC and NRW. Horizon has concerns that for structures where both IACC and NRW will be the discharging authorities (due to the structure traversing the marine and terrestrial environment), there could be the potential for conflict and disagreement between the entities in respect of a discharge application. There needs to be appropriate mechanisms to manage this balance so that the Wylfa Newydd DCO Project (Project) is not impacted due to disagreements between the discharging authorities.
- 1.2.8 Horizon has sought confirmation from IACC and NRW as to when a draft MOU would be circulated for review and IACC has advised that there is no intention to progress this during Examination but that this would be done when the Project progresses. In view of the concerns referred to above, it is imperative that Horizon be consulted in preparing the MOU and have the right to approve the final version. Horizon has therefore inserted a new clause in Schedule 19 of the DCO (submitted at Deadline 8) to make it clear that where there are dual discharging authorities in respect of the same Work, the discharge of any approvals under the Requirements for that Work will be managed in accordance with a MOU agreed between Horizon, NRW and IACC.

"Maintain"

- 1.2.9 The issues relating to the definition of "maintain" have been well traversed during examination and Horizon maintains its position as set out in [REP3-019] and as set out in the submissions by Counsel at the January and March DCO ISH [REP4-004/ March submissions yet to be published].

Applicability to associated development sites

- 1.2.10 In its Deadline 7 submission (published 14 March 2019), IACC reiterates previous concerns regarding the applicability of "maintain" to associated development sites and the impacts this could have on local communities. IACC continues to advance the alternative definition proposed in [REP4-034] which seeks to separate the definition between WNDA and associated development sites.
- 1.2.11 In respect of IACC's alternative definition, Horizon's position remains as set out in response to SWQ2.4.4 [REP5-002]; however, in sum, the alternative definition is not necessary or appropriate because:

- Limiting "relying, extending or enlarging" to the WNDA ignores the need for these types of works at associated development sites. The example that has been previously provided at the DCO ISHs is the possible extension of bus shelters at the Park and Ride facility.
- Clarification that maintenance works cannot apply where the work is being decommissioned ignores that some temporary works will be decommissioned in phases, and is not necessary as once decommissioned, maintenance works will not be required as the work is no longer operational.

Restriction on maintenance works

- 1.2.12 In its Deadline 5 and 7 submissions [REP5-080/published 15 March 2019] , the Welsh Government has requested that the words "do not go beyond the maximum parameters assessed within the Environmental Statement" are included within the definition.
- 1.2.13 As stated at the DCO ISH held on 6 March 2019, Counsel for Horizon outlined that he does not consider that this inclusion is necessary as the maximum parameters are already included within the definition by reference to the Environmental Statement. These parameters form the baseline assessment by which Horizon needs to determine if a maintenance work creates any "materially new or different environmental effects to those identified in the Environmental Statement". In addition, explicit reference to the maximum parameters makes the test less clear as it is not clear what maximum parameters are being referred to and indeed, ignores the importance of minimum parameters (where relevant) in the assessment.

Definitions sought by NDA

- 1.2.14 Definitions for "Existing Power Station", "Magnox", "NDA" and "NDA Site" have been sought by NDA in its submission (published 1 March 2019) . For the reasons set out below in respect of articles 9 and 29, these definitions are more appropriate within the protective provisions in Schedule 15 and therefore, with the exception of "NDA", have not been included in article 2.
- 1.2.15 "NDA" has been included as Horizon inserted a new paragraph to ensure that NDA was deemed a "statutory undertaker" for the purposes of that article and Schedule 15, given it does not meet the usual criteria for a statutory undertaker under the Planning Act 2008.

Article 5 – Effect of the Order on the site preparation permission

- 1.2.16 Horizon understands that Interested Parties are comfortable with the changes that were made to Article 5 at Deadline 5 [REP5-003] following the withdrawal of the site preparation and clearance planning permission.
- 1.2.17 In its Deadline 7 submission, the Welsh Government has requested that the definition of "SPC Permission" is amended to be consistent with the works permitted under Work No.12 in Schedule 1 of the Order as this will make the determination under article 5(6) of what conditions are deemed to be approved for the purposes of the DCO Requirements much simpler.

- 1.2.18 Horizon has considered this amendment but is of the view that it would not be appropriate to confine the SPC works under a future planning application in this way – as they could be smaller, the same, or larger than Work No.12. In any event, the decision on what conditions are deemed approved is one for IACC and the undertaker and so if the planning permission works are different to Work No.12, the parties would likely not agree to the works under the planning permission being taken as discharging obligations in respect of Work No.12.
- 1.2.19 Horizon has accepted the other minor amendments sought by the Welsh Government in respect of this article.

Article 9 – Consent to transfer benefit of Order

- 1.2.20 The Nuclear Decommissioning Authority (NDA) has advised that it will not agree to the protective provisions in Part 3 of Schedule 15 of the DCO unless Horizon amends articles 9 and 29 of the Order.
- 1.2.21 In its March submission, the NDA outlines that article 9 must be amended to prevent the transfer or grant of any part of the DCO that relates to the NDA Site unless the transferee or lessee has first entered into a co-operation agreement with the NDA and Magnox. Horizon already has a co-operation agreement with the NDA (which applies to any successors or transferees); however, this only applies to some of the NDA Sites affected by the Order, not all. The specific amendments sought are set out in their Deadline 7 submission.
- 1.2.22 Horizon acknowledges the NDA's concerns but as this matter relates to private land interests it considers that this issue can be, and is more appropriately, dealt with through the protective provisions in Schedule 15 of the Order. Horizon has therefore offered to include a bespoke clause in the protective provisions which makes it clear that the undertaker cannot undertake any works or impact any rights on the NDA Sites unless it has a co-operation agreement in place in respect of those sites with NDA and Magnox. This drafting is included in the protective provisions in the Deadline 8 final DCO (see clause 30 of Part 3 of Schedule 15):

Cooperation

30. The undertaker must not exercise any powers under this Order on any part of the NDA Site, unless and until the undertaker has entered into a co-operation agreement with NDA and Magnox to facilitate the decommissioning and delicensing of the NSL Site and fulfilment of any statutory requirements.

- 1.2.23 The key dispute between the parties is therefore the mechanism by which this protection is secured. In Horizon's view, an amendment to article 9 is not necessary as the protective provisions provide a secure mechanism to achieve the NDA's request. As outlined in article 37 (Statutory undertakers), Horizon's ability to acquire land, acquire rights or impose restrictive covenants, extinguish or suspend rights, or construct the authorised development under the DCO are subject to the protective provisions in Schedule 15 of the Order. Therefore, a clause which prevents the exercise of these powers until a co-operation agreement is in place provides NDA with the security it is seeking.

- 1.2.24 In addition to it not being necessary, Horizon considers it to be inappropriate for article 9 to refer to private agreements with third parties. DCOs are pieces of legislation and it is not usual practice to impose restrictions in respect of private agreements with statutory undertakers in the main body of the Order. It is for this reason that DCOs have negotiated protective provisions (as recognised and encouraged by PINS' Advice Note 15) and why Horizon has provided protective provisions for the NDA in this instance. There is a practical reason for this approach to DCOs and that is that if all private agreements on land interests of statutory undertakers were recorded in Article 9 then it would make the DCO unwieldy; particularly when this control can be secured in a more appropriate place in the Order.
- 1.2.25 Horizon has sought to resolve this issue with the NDA but NDA's solicitors have advised that it is not willing to consider any alternative mechanism to resolving this issue, other than through the amendments to the article. For this reason, Horizon has put forward its preferred approach in Schedule 15 of the final DCO. (As set out below, this is the only point that has not been agreed in respect of the protective provisions for NDA.)

Article 10 – Defence to proceedings in respect of statutory nuisance

- 1.2.26 In previous submissions, Interested Parties have raised concerns that article 10 provided a statutory defence to Horizon on the basis of control documents which were not considered adequate. In particular, IACC has stated that the defence provided under section 158 *"assumes that there are proper controls in places of the works"* but that the detail in the CoCPs is too high level and vague to constitute a meaningful control [REP4-034/ REP5-057].
- 1.2.27 As noted previously, section 158 of the Planning Act 2008 provides a wide defence of statutory authority in proceedings for nuisance if a person carries out development for which consent is granted by an order granting development consent. Notably, the immunity under section 158 is wide unless *"any contrary provision made in any particular case by an order granting development consent"*. Therefore section 158 does not *assume* proper controls are in place; it is for a DCO to set the controls.
- 1.2.28 However, since Deadline 6, Horizon has made a lot of progress with IACC and other Interested Parties to agree the content of the CoCPs and has offered a range of schemes for subsequent approval where the content could not be agreed. For this reason, Horizon assumes that the previous concerns with the adequacy of the control documents has now been resolved and Interested Parties are comfortable that the defence under article 10 is appropriate. Horizon notes that article 10 has not been raised in any Deadline 6 or Deadline 7 submissions.

Article 29 – Private rights

- 1.2.29 In its March submission, NDA also outlines an amendment to article 29 which deals with how private rights will be extinguished or suspended. NDA seeks for a new paragraph to be inserted confirming that this article does not apply to any rights or restrictions of the NDA.

- 1.2.30 While NDA is correct that this reflects what is in the Book of Reference and that Horizon does not intend to affect any of NDA's rights and restrictions where it seeks to acquire land from a third party, Horizon does not consider that an amendment to article 29 is necessary as this protection is already provided under article 37 which states that the ability to "extinguish or suspend the rights of...statutory undertakers" (paragraph (d)) is subject to the protective provisions in Schedule 15 which provide that Horizon can only do this if:
- It has NDA's consent;
 - the designating directions in respect of that land have been modified or revoked; and
 - the NSL has been in respect of that land revoked or surrendered.

Article 31 – Acquisition of subsoil

- 1.2.31 In its Deadline 5 submission, IACC has stated that Horizon should specifically identify what subsoil rights it will seek to acquire under this article. IACC has not raised this issue again in its Deadline 6 or 7 submissions.
- 1.2.32 As noted in response to SWQ2.4.8 [REP6-009], Horizon noted that, at this stage of the Project, it is not possible to provide IACC with the level of specificity that it is seeking. Horizon cannot at this stage identify the exact portion of subsoil in each plot that it will seek to acquire because the detailed design of the A5025 Offline Highway Improvements has not yet been finalised and submitted for approval. Only when IACC have approved the detailed designs submitted under the DCO requirements and the protective provisions for IACC as a highway authority will it be possible to provide the level of specificity being sought by IACC.
- 1.2.33 This position is common to many DCOs in which powers to acquire subsoil rights have been granted. To require Horizon to provide specifics at this stage, would require Horizon to tie itself to fixed designs without the detailed design work being carried out. Horizon also notes that the majority of the subsoil being sought within the highway is not owned by IACC, but third parties.
- 1.2.34 For this reason, Horizon is not in a position to amend the Book of Reference or DCO to clarify the extent of the rights sought; however, this will be clear at the time that notices are served.

Article 74 – Operational land for the purposes of the 1990 Act

- 1.2.35 In its Deadline 5 submission, IACC has stated that it is not necessary or appropriate for electricity undertaker to have permitted development rights outside the WNDA. IACC has not raised this issue again in its Deadline 6 or 7 submissions.
- 1.2.36 Horizon has sought inclusion of this article on the basis that there may, in future, be works that were not contemplated by the ES but fall within the scope of permitted development rights under Part B of the Town and Country Planning General Permitted Development order 1995/418 in respect of harbour and electricity undertakers. For these types of works Horizon

considers it should be in the same position as any other statutory undertakers that have been granted a specific planning permission but still have the benefit of the permitted development rights for operational land under section 264 of the Town and Country Planning Act 1990. Horizon also notes that this article is standard across other granted DCOs (for example, Eggborough, Richborough, Meaford Gas Station, Swansea Bay, Knottingley Power Plant, Hornsea, and Walney Extension).

Article 84 – Funding for implementation of the authorised development

- 1.2.37 In its Deadline 7 submission, the Welsh Government has requested that article 84 should be amended to specifically prohibit any works in relation to the Kitchen Garden until the undertaker has demonstrated to the Secretary of State that it has actual funding in place (rather than the current test where the undertaker must satisfy the Secretary of State that the Project will be implemented and there are no obstacles to obtaining the necessary funding).
- 1.2.38 Horizon does not consider this additional restriction is necessary for the following reasons:
- Work No.12 has been amended in the updated draft DCO at D8 to specifically exclude Kitchen Garden; therefore there is no risk to Kitchen Garden during Work No.12 being undertaken (noting that for Work No.12 article 84 requires a security to be provided in advance).
 - Any works in respect of the Kitchen Garden would be subject to the test in article 84 – that is, the Secretary of State must be satisfied that the development will be implemented and that there are no funding difficulties.
 - The test in article 84 follows the policy test that the applicant has demonstrated there is a reasonable prospect of the funding being available – it does not require an applicant to demonstrate it has the funds or assets in place. As set out in Horizon's post-hearing note on articles 83 and 84 (yet to be published), it would be prejudicial to require Horizon to be subject to a more stringent test than any other DCO applicant who has had a DCO granted without the necessary funding in place at the time of grant.
 - There is no justification in policy or precedent to require further security for the Kitchen Garden or to suggest that the current standing test is not sufficient.
- 1.2.39 No other Interested Parties have raised concerns in relation to Article 84 and so Horizon assumes that they are comfortable with the protections now provided. IACC has noted that it is comfortable with the drafting of article 84 in its Deadline 7 submission (published 14 March 2019) and considers it will ensure that funding will be provided at the appropriate time.

New article regarding restoration

- 1.2.40 In addition, to the additional protection that the Welsh Government have sought in respect of article 84 and Requirement SPC13, the Welsh Government in its Deadline 7 submission has reiterated its request for a new article/requirement which requires Horizon to provide a restoration bond in the event of abandonment of the Project between Work No.12 and decommissioning of the Power Station.
- 1.2.41 Horizon does not consider that a restoration bond of this type is appropriate or necessary.
- 1.2.42 As outlined in Horizon's post-hearing note on articles 83 and 84, there is no justification or precedent for the imposition of a restoration obligation for NSIPs (or other major developments under the town & country planning system). The imposition would severely prejudice Horizon and its ability to both secure funding, and implement the Project or transfer the Order to another undertaker. It would effectively end the Project. Any undertaker that is ready to implement a NSIP will have reached a final investment decision or its equivalent, and undergone rigorous due diligence by government regulators to ensure it is capable of delivering the project.
- 1.2.43 Restoration obligations in the event of abandonment have been rejected in other DCOs, such as the Hinkley Point C DCO where the Examining Authority stated "*that national policy does not require that infrastructure projects must insure themselves against the possibility of incomplete development. The draft DCO contains no requirement for such insurance, and would set no precedent for such a requirement to be imposed in future.*" For this reason, the ExA refused to impose such an obligation.
- 1.2.44 In any event, we would expect that the Secretary of State would not provide consent to an undertaker under Article 84 if it did not consider that it had the funding necessary to implement and complete the Project. For these reasons, Horizon is strongly opposed to a secondary restoration obligation being imposed upon it.
- 1.2.45 Horizon notes that previously a restoration security had been agreed under the draft SPC s.106 agreement; however, this was only agreed to address the risk of the works commencing under such planning permission and the DCO not being granted – not restoration up until first nuclear concrete pour.

1.3 DCO Schedules

Schedule 1 – Other Associated Development – Item (p)

- 1.3.1 Horizon's general position on the appropriateness and need for item (p) as set out at the January DCO ISH [REP4-004].

Removal of "expedient"

- 1.3.2 In their Deadline 7 submissions, IACC has sought the removal of "expedient" from item (p). IACC has also reiterated its concerns about the cumulative effects of works under this catchall.
- 1.3.3 As noted at the March DCO ISH by Counsel (submissions yet to be published), while "expedient" could be removed from this paragraph, the term has been included in a number of granted DCOs to date and so IACC has not provided any persuasive argument as to why this DCO should be an exception.

Maximum parameters

- 1.3.4 As noted at the March DCO ISH and in its Deadline 5 and 7 submissions, the Welsh Government has sought for this item to be restricted to the "maximum parameters assessed within the Environmental Statement" (similar to its request in respect of the definition of "maintain" and tailpieces)
- 1.3.5 As noted above in relation to "maintain", Horizon does not consider that it is necessary to amend the definition in the way that the Welsh Government has sought, as parameters have already been captured in the inclusion of "Environmental Statement" and to refer to parameters would create more uncertainty as to what is actually meant.

Schedule 3

Use of tailpieces

- 1.3.6 While other Interested Parties appear to be comfortable with the use of tailpieces within the requirements, Welsh Government has requested that the tailpiece provision in paragraph (4) of Schedule 3 is amended to explicitly refer to the "maximum parameters assessed in the Environmental Statement" (similar to its request in respect of the definition of "maintain" and item (p) in Schedule 1 above). As noted above in relation to the definition of "maintain", the requested inclusion is not considered necessary as the clause already provides for it and to refer to parameters would create more uncertainty as to what is actually meant.
- 1.3.7 Horizon's general position in relation to the tailpieces is set out in response to FWQ4.0.56 [REP2-375].

PW2 – Phasing Strategy

Discharging authorities

- 1.3.8 In its Deadline 5 submission [REP5-081], NRW requested that it is identified as a discharging authority in respect of the Phasing Strategy. Horizon does not consider this appropriate for requirements to have more than one discharging authority as this could lead to issues where discharging authorities do not agree with each other. This approach was confirmed by IACC in response to SWQ2.4.21 [REP5-057].
- 1.3.9 In addition, given that the Phasing Strategy relates to the avoidance of land-based effects (i.e. the provision of the MOLF to avoid traffic impacts), Horizon does not consider it necessary to identify NRW as the discharging authority or as a consultee; however, it notes that IACC has the discretion to consult with NRW, along with any other statutory bodies it considered appropriate, under Schedule 19 of the Order.

Securing mechanism

- 1.3.10 In its Deadline 7 submission, IACC raises concerns about the adequacy of the Phasing Strategy and that the delivery of key mitigation would be more appropriately secured by a requirement, rather than the DCO Section 106 Agreement [REP6-004].
- 1.3.11 IACC's comments appear to be in relation to Welsh Government's request for the delivery of key mitigation to be secured under the DCO Section 106 Agreement , rather than under Requirement PW2. Horizon understands that IACC is comfortable with the current approach of having the phasing set out in the Phasing Strategy and compliance with that strategy secured through requirement PW2 and so its comments illustrate the support for the proposed approach (noting its concerns with the content of that document).

PW3 – Construction Method Statement

- 1.3.12 In its Deadline 5 submission, NRW sought to be a discharging authority in respect of the CMS.
- 1.3.13 As noted above in respect of the Phasing Strategy, Horizon has sought to only identify one discharging authority in respect of the requirements. However, Horizon recognises that some of the methodologies identified in the CMS relate to the Marine Works and so has identified that IACC must consult with NRW in relation to any changes proposed by Horizon to the CMS (not just the Marine elements).

PW7 – Wylfa Newydd CoCP and Schemes

Wylfa Newydd CoCP

- 1.3.14 In its Deadline 5 submissions, NWP and NWFRS stated that the Wylfa Newydd CoCP (and all other sub-CoCPs) are, in effect, outline documents, and should be submitted for approval. IACC and the Welsh Government have also made similar comments at earlier deadlines; however, no comments have been made on this point in their Deadline 7 submissions.
- 1.3.15 Since Deadline 6 a lot of work has been undertaken to agree the content of the CoCPs or provide a scheme for approval where content cannot be agreed. Horizon therefore, considers that the detail in the CoCPs is adequate for this document to be approved through the DCO process. Given that IACC and Welsh Government has not raised concerns with the CoCPs being approved as part of the DCO at Deadline 7 (rather than still seeking for them to be subject to post-grant approvals), Horizon understands that this is no longer an issue.

Protest Management Scheme

- 1.3.16 In its Deadline 7 submission, NWP stated that the Emergency Services Engagement Group (ESEG) should be listed as the consultee in respect of the Protest Management Scheme and that this scheme should apply Project-wide, not just to the WNDA. No other comments have been raised by other Interested Parties in respect of this scheme.
- 1.3.17 In regards to consultees, the DCO has not referred to groups that are established under the DCO Section 106 Agreement; only statutory bodies and so, it is not appropriate to identify the ESEG as a consultee.
- 1.3.18 While Horizon could also include North Wales Fire and Rescue Service (NWFRS) and the Welsh Ambulance Service NHS Trust (WAST) as consultees, this does not seem appropriate for a scheme relating to the management and measures to prevent protests occurring in relation to the Project. It is appropriate that the NWP should be a consultee, given the interrelationship with their functions if a protest event occurred. In any event, Schedule 19 provides that IACC can consult with the NWFRS and WAST if it considered appropriate.

Community Safety Management Scheme

- 1.3.19 In its Deadline 5 and 7 submissions [REP5-073/ published 14 March 2019]], NWP has requested that the consultees in Schedule 21 of the Order should be expanded to include the ESEG. No other comments have been raised by other Interested Parties in respect of this scheme.
- 1.3.20 As noted above, the DCO only refers to statutory bodies, not engagement groups established under the DCO Section 106 Agreement. Horizon also does not consider that it is necessary to refer to ESEG, as its members are already identified in Schedule 21 as consultees on this scheme.

PW8 – Workforce behaviour

Approval of Codes of Conduct

- 1.3.21 In the Deadline 5 submissions, NWP, IACC and NWFRS [REP5-087] stated that the Code of Conduct should be for approval.
- 1.3.22 During discussions with IACC on 8 March 2019, it appeared to Horizon that IACC was now comfortable with this approach on the basis of the new amendments proposed at Deadline 5 (and this was not raised in its Deadline 7 submission). This issue has also not been raised by the Welsh Government in its Deadline 6 or 7 submissions.
- 1.3.23 In response to NWP, as stated in Horizon's response to SWQ2.4.17 [REP5-002], workforce behaviour will largely be governed through the terms of employment under which the workforce is engaged to work on the Project, which will be based on appropriate industry standard agreements (such as the National Agreement for the Engineering and Construction Industry (NAECI 2015) and the Construction Industry Joint Council (CIJC) Working Rule Agreement). Alongside this, the workforce will be required to sign a CoC, which Horizon will develop and agree with its supply chain and trade unions. These points have been further detailed in the updated Workforce Management Strategy (WMS) submitted at Deadline 5 [REP5-037] (noting that a further updated WMS is being submitted at Deadline 8 with minor amendments).
- 1.3.24 It is important to recognise that due to the expected and essential involvement of different trade unions, representing a wide spectrum of the workforce it is inevitable that negotiations to agree the wording of a since Code of Conduct (CoC) will be extremely challenging. It is nevertheless Horizon's intention to achieve this. However, it is not practicable (and could result in substantive delays for the Project) for the discharging authority to be permitted to approve the CoC once agreement has been reached with the trade unions. Horizon will, however, commit to consultation with IACC and NWP during the course of negotiations on the CoC. This has been reflected in the updated DCO submitted at Deadline 8.
- 1.3.25 At Deadline 5, Horizon made a number of amendments to Requirement PW8 at Deadline 5 to try and resolve concerns of Interested Parties. This included expressly providing that Horizon must comply with the WMS principles throughout the duration of construction and providing that any amendments to the principles can only be made with the approval of IACC, in consultation with NWP.
- 1.3.26 Horizon considers that the amendments to PW8 provides Interested Parties enough certainty on workforce behaviour whilst still ensuring that Horizon and its sub-contractors can get on with the construction of the Project. To require CoC to be approved by IACC would impose a significant constraint on Horizon's ability to deal with unions and contractors and undertake the Project in an efficient and timely manner.

Enforceability of WMS

- 1.3.27 In its Deadline 5 submission [REP5-080], the Welsh Government raised concerns regarding the wording of the principles in the WMS and the ability to enforce against them. The Welsh Government has not raised this matter in its Deadline 6 or 7 submissions.
- 1.3.28 Horizon acknowledges the Welsh Government's concerns but notes that the principles as are clear and as directive as is possible, taking into account human rights and employment legislation.

Approval of revisions to the CoC

- 1.3.29 In its Deadline 7 submission, NWP has sought for PW8(4) to be amended so that any revisions to the CoC must be approved by NWP, rather than being provided for information.
- 1.3.30 Horizon does not consider that this is necessary on the basis that the requirement is that any revisions to the CoC must be in accordance with the WMS. The obligation therefore is on Horizon to ensure this is the case otherwise it will be in breach of the requirement and liable to enforcement proceedings. Any revisions are provided for information so that the discharging authority has overview of the amendments and is able to check for itself compliance with the WMS.

PW9 – Date of final commission and cessation

- 1.3.31 In its Deadline 7 submission, the Welsh Government stated that PW9 should be amended to provide notice of cessation earlier than is currently required under this requirement (as soon as reasonably practicable and, in any event, within three months after the occurrence of that date).
- 1.3.32 Horizon does not consider that this amendment is necessary and that the timeframe in PW9 is appropriate and notes that this notice period is identical to other granted DCOs such as Wrexham, Progress Power and Hirwaun (all of which are Welsh DCOs).

SPC12 - Access

- 1.3.33 Throughout examination NWP has raised concerns about the adequacy of the setback in Requirement SPC12 in allowing safe access to the main site by all types of construction vehicles.
- 1.3.34 Horizon disagrees with NWP and notes that IACC, as the highway authority, stated its support for the 8m setback [REP5-057] as this had been agreed as part of the SPC planning permission (which this requirement is based on). As set out in response to FWQ4.0.65 [REP2-153], Horizon noted that the set back is intended to ensure that there is a solid access onto, and from, the public highway to minimise the potential for tracking issues, not to accommodate the entire length of a longest vehicle.
- 1.3.35 Given that the highway authority considers the setback is appropriate, Horizon does not consider any amendments are required to this requirement, and notes that NWP has never suggested an alternative setback for it and IACC to consider.

- 1.3.36 NWP has not raised this issue within its Deadline 7 submission (published 14 March 2019) and so Horizon assumes that this is no longer an issue.

WN1 – Main Power Station Site sub-CoCP and Schemes

AIL Management Scheme

Application to Work No.12

- 1.3.37 In their Deadline 7 submissions , Welsh Government and NWP both state that the AIL Management Scheme should also apply to Work No.12 (and therefore be within Requirement PW7). This is because the Welsh Government understands, based on its SoCG discussions with Horizon, that peak AIL activity will be reached in the first two years of construction.
- 1.3.38 Horizon does not agree that the AIL Management Scheme should apply to Work No.12 because there are no AILs associated with this work, only HGVs. The reference to peak activity occurring in the first two years of construction is incorrect; it will occur within the first two years of Main Construction (which commences following the completion of Work No.12). For this reason, this scheme should remain within Requirement WN1 and not be a Project-wide requirement.

Consultees

- 1.3.39 In its Deadline 7 submission, NWP stated that the ESEG should be listed as the consultee in respect of the AIL Management Scheme.
- 1.3.40 For the reasons set out above in respect of the Protest Management Scheme, Horizon does not consider this appropriate.

Overarching Construction Drainage Scheme

Sewage treatment plant

- 1.3.41 In its Deadline 7 submissions, IACC has sought for the design of the sewage treatment works to be subject to an approval under a scheme in Schedule 21.
- 1.3.42 In the final DCO submitted at Deadline 8, Horizon has amended the scope of the Overarching Construction Drainage Scheme (which must be submitted to IACC for approval) to provide that that scheme must also include details of the location and indicative design parameters of the sewage treatment plant. At the time that that scheme is submitted, Horizon will not have the final design available for approval as the sewage plant will be constructed following the main excavation works. For this reason, the scheme will provide IACC with details of the indicative design parameters (such as capacity) so it has certainty over what will guide the final design of the sewage plant at the time that is developed and included as part of the phased drainage plans that come forward under Requirement WN1[A].

Drainage within Tre'r Gof

- 1.3.43 In its Deadline 7 submission, NRW raises concerns with the proposed drainage within the Tre'r Gof catchment during construction and operation.

- 1.3.44 Horizon notes that the new Overarching Construction Drainage Scheme must include details of the protections proposed for Tre'r Gof and Cae Gwyn as well as be:
- in accordance with the drainage principles in Sections 10 of the Wylfa Newydd COCP, Main Power Station Site sub-CoCP, and the LHMS (which include a range of controls in relation to the SSSIs)¹; and
 - in general accordance with construction landform drainage design drawings presented in Wylfa Newydd Development Area - Power Station Site Plans (Part 1 of 2) in Schedule 2 (Approved plans) and the general principles set out in Appendix D8-A of the Environmental Statement Addendum. (In general accordance has been proposed as these documents are indicative.)
- 1.3.45 In addition to this scheme, Horizon has also offered a Monitoring and Mitigation scheme for the Tre'r Gof SSSI which must outline the mitigation measures to be implemented if an effect on the SSSI is identified. Both of these schemes must be submitted for approval to IACC and NRW has been identified as a consultee.
- 1.3.46 Horizon has provided the scope of these schemes to NRW for review but is awaiting comment.

Traffic Incident Management Scheme

Application to Work No.12

- 1.3.47 In its Deadline 7 submission, IACC also states that the Traffic Incident Management Scheme (TIMS) should apply to Work No.12 and fall within Requirement PW7.
- 1.3.48 Horizon had excluded Work No.12 from the scope of the TIMS on the basis that the scale of these works were minor and therefore did not need to have emergency arrangements in place. Based on discussions with IACC on 8 March 2019, Horizon had understood that IACC was comfortable that the TIMS did not need to apply to Work No.12. Horizon also notes that the conditions that were proposed under the site preparation and clearance permission did not include a requirement for a TIMS, although it did include a requirement for a Construction Traffic Management Plan (which is now being covered under the protective provisions under Schedule 15).

Consultees

- 1.3.49 In its Deadline 7 submission, NWP stated that the ESEG should be listed as the consultee in respect of the TIMS.

¹ For example, construction and operational principles in the LHMS require "The drainage strategy will be designed to reduce potential effects that could have otherwise occurred on receiving water bodies and ecological receptors, most notably the Tre'r Gof SSSI and the Cae Gwyn SSSI."

- 1.3.50 For the reasons set out above in respect of the TIMS, Horizon does not consider this appropriate (although noting the roles that these entities would play in an emergency event).

WNDA Archaeological Mitigation Scheme

- 1.3.51 In its Deadline 7 submission, the Welsh Government states that more detail is needed within the scope of this scheme in Schedule 21 to include phasing, triggers and timetable as well as reference to the existing written scheme of investigation for the archaeological works that have been undertaken to date on the site.
- 1.3.52 Horizon notes that the scope of the scheme in Schedule 21 already includes reference to "the method and programme for field work previously undertaken and to be undertaken". Horizon considers that the requirement of this scheme to include reference to programme would cover the phasing, triggers and timetable of the works and the previous WSI has already been incorporated into this scheme.

WN1[A] and WN1[B] – Phased construction drainage and lighting plans

- 1.3.53 In its Deadline 7 submission, IACC have stated that it wants to have approval rights in respect of the phased construction drainage and lighting plans that Horizon must be prepare under Requirements WN1[A] and [B].
- 1.3.54 Horizon considers that this approval right is not appropriate as IACC will have approval rights in respect of the Overarching Schemes under WN1 which these phased plans must be in accordance with, otherwise Horizon will be in breach of the DCO requirements. Matters dealt with under the phased plans (such as discharges) will also be subject to the separate environmental permit process with NRW and so there will be an additional level of control over their contents.

WN11 – Landscape and habitat management schemes

- 1.3.55 IACC's Deadline 7 submission notes that it has had discussions with Horizon over the proposed drafting of Requirement WN11 (which relates to landscape and habitat management schemes).
- 1.3.56 Following the meeting with IACC on 8 March 2018, Horizon amended this requirement to split out schemes in relation to construction and final landscaping and habitat and to amend the triggers for submission. IACC confirmed it was happy with the proposed amendments and these have been included within the final draft DCO submitted at Deadline 8.

WN15 and 16 – WNDA Parking

- 1.3.57 Throughout examination, both IACC and the Welsh Government have sought a minimum car parking provision to be included within these requirements for each phase of construction and operation.
- 1.3.58 Horizon maintains its position in response to FWQs4.0.72 [REP2-375] that minimums are not necessary; however, it notes that as part of the new Parking

Phasing Scheme which must be submitted to IACC for approval, Horizon must provide the minimum and maximum parking provisions for each phase. This is reflected in the final DCO submitted at Deadline 8.

- 1.3.59 Horizon considers that this addresses IACC and Welsh Government's concerns and an amendment is not required to WN15 or WN16 as this would be duplicative. In any event, Horizon considers that outlining the provision through the scheme is more appropriate as it provides more flexibility for Horizon to amend these provisions if required (with the consent of IACC), rather than having to seek a formal change to the DCO in the event that these provisions turn out to be incorrect.

WN20 – Site Campus Parameters

- 1.3.60 In its Deadline 5 submission, IACC acknowledges Horizon's explanation for the maximum parameters for the Site Campus but want greater flexibility in the design and layout of the Site Campus (parameter limits) to allow for potential changes in storey heights. This could potentially result in the removal of some accommodation blocks (particularly the three accommodation blocks towards Wylfa Head).
- 1.3.61 Horizon maintains its position as set out in response to IACC's comments on SWQ2.4.33 that any condensing of the Site Campus could result in increased visual impacts due to increased heights. The proposed parameters, which have been carefully considered during the design development, provide a good balance of flexibility during detailed design and manufacturing stage as well as allowing meaningful and robust visual assessment of the worst case.

PR5 – Operational Parking

- 1.3.62 In its Deadline 7 submission, the Welsh Government has requested that PR5 is amended to specifically state that 1,000 parking spaces will be provided for long-stay parking and the remaining 900 parking spaces will be provided for daily commuters. It also requests that this is included within the Park and Ride sub-CoCP.
- 1.3.63 As noted in respect of WN15 and 16, Horizon does not consider that an amendment to PR5 is necessary as the Parking Phasing Scheme will identify the nature of the provision (i.e. visitor, disability or worker use and whether fitted with an electric vehicle charging point). In addition, an amendment to the requirement reduces flexibility to amend the parking provision in the event that the balance between long-term and commuter parking is not 1,000/900. The inability to be able to amend this figure (without having to submit a change to the DCO) would have serious traffic impacts.

LC1 – Logistics Centre sub-CoCP and Schemes

- 1.3.64 In its Deadline 7 submission, the Welsh Government has requested the inclusion of a requirement for a landscaping master plan and screening scheme.
- 1.3.65 Following discussions with IACC on the 8 March 2019, Horizon proposed the submission of detailed landscaping design and maintenance plans to be

submitted to IACC for approval. This has been inserted as a new Requirement LC4[A] in the final DCO submitted at Deadline 8. IACC has confirmed that it is happy with this new requirement.

- 1.3.66 LC4[A] requires this design to be in accordance with the landscaping design principles in the Design and Access statement which includes principles relating to heritage assets.
- 1.3.67 Horizon considers that with the inclusion of LC4[A] resolves the Welsh Government's concerns.

Grampian condition and restriction on Site Campus occupancy

- 1.3.68 In its Deadline 4 submission [REP4-036], Land and Lakes proposed that a Grampian condition is imposed on Horizon, requiring Horizon to submit a scheme to the local planning authority demonstrating how it is proposed to accommodate 3500 workers (with only 500 being allowed at the Site Campus).
- 1.3.69 Horizon strongly objects to the imposition of such a condition and maintains its position as set out at [REP5-048] and in the cover letter submitted at Deadline 7 (yet to be published).

Potential new tern compensation requirement

- 1.3.70 Horizon is currently liaising with NRW over the need for requirements to be inserted into the DCO in respect of tern compensation sites. Horizon's position on this is set out in its current position in response to NRW's Deadline 7 submission (submitted at Deadline 8); however, Horizon is working with NRW to reach agreement.
- 1.3.71 This means that this matter remains unresolved as at Deadline 8 and so Horizon may need to submit a minor update to the DCO at Deadline 9 (10 April 2019) which incorporates any additional requirement, if necessary.

Other requested schemes

Construction Traffic Management Strategy

- 1.3.72 Throughout examination, the Welsh Government, IACC and NWP have sought for Construction Traffic Management Strategies (CTMPS) to be submitted and approved by IACC under a requirement.
- 1.3.73 In addition to the traffic controls within the CoCPs which have been amended since submission, Horizon has also agreed with IACC that CTMPS will be provided as part of the protective provisions in Schedule 15 of the Order. This has been reflected in the final DCO submitted at Deadline 8.

Operational Travel Management Strategy

- 1.3.74 In its Deadline 5 and 7 submissions, NWP has requested Horizon submits an operational travel management strategy for approval by IACC.
- 1.3.75 Horizon does not consider that an additional scheme is necessary as the controls in the Wylfa Newydd Code of Operational Practice are sufficient to

manage traffic effects associated with the operation of the Power Station (which are considered to be limited).

MOLF Operational Plan and Site Security Plan

- 1.3.76 In its Deadline 5 and 7 submissions, NWP has continued to request that Horizon should be providing an operational plan for the MOLF and a Site Security Plan.
- 1.3.77 As outlined in the SoCG between Horizon and NWP that has been submitted at Deadline 8, NWP had acknowledged that a fully detailed plan for the operation and security of the MOLF will not be progressed further by Horizon at this stage, but that the operation of the MOLF will be subject to a full Port Management Safety Plan (outside the control of the DCO regime). Horizon has also committed to providing NWP with sufficient information, at the appropriate time, in order to undertake an assessment of the potential impact of the construction and operation of the MOLF on the efficient running of their services.
- 1.3.78 In addition to the MOLF Operational Plan, the SoCG also outlines that the parties had agreed that Horizon has a statutory duty to prevent unauthorised access to the Project and will complete site-specific assessments of the security and trespass risk at each site and implement appropriate control measures. The site boundary will be secured and constructed such that it minimises opportunities for unauthorised entry and criminal offences by protestors. Horizon has also committed, through the Wylfa Newydd CoCP, to conduct regular security patrols of the site boundary on a 24 hours basis.
- 1.3.79 Given the discussions between the parties through the SoCG process, it is not clear to Horizon why these plans remain an outstanding issue for NWP.

Schedule 15 – Protective Provisions

NDA

- 1.3.80 As noted above in respect of articles 9 and 29, the only outstanding point of contention on the NDA protective provisions is the clause relating to co-operation (clause 30). All other matters have been agreed with NDA.

Network Rail

- 1.3.81 As noted at the DCO ISH held on 6 March 2019, the protective provisions that have been proposed by Network Rail are grossly out of proportion with the land affected (original provisions attached as **Appendix 3**).
- 1.3.82 The land in question is a very small section of land at the bottom of Section 1 of the A5025 Off-Line Highway Improvements which is an entrance of a freight yard which will only be used until the end of 2019. The land is located some distance from Network Rail's railway lines. A key concern of Network Rail's is that access to the site is not affected by the construction of Section 1.
- 1.3.83 Horizon reviewed the protective provisions and considered that they do not reflect the controls that are needed for this particular site. For example, the protective provisions contained protections in relation to electrical

interference; however, this land is not a railway site or located anywhere near the railway lines.

- 1.3.84 The protective provisions that have been inserted into the final DCO submitted at Deadline 8 are those that have been amended by Horizon and ensure that access is maintained for Network Rail at all times, and that Horizon must seek consent before it seeks to compulsory acquire any interest in the land.

Schedule 19

Appeal body

- 1.3.85 The issue of who should be the appeal body for the purposes of Schedule 19 has been discussed at length in submissions and at the ISHs with Welsh Government.
- 1.3.86 Horizon maintains its position as set out in response to SWQ2.4.43 [REP5-002] and considers that this matter should be left to the Secretary of State as there has been a divergence of approaches in Welsh DCOs, even where the Welsh Government has made submissions on the point.
- 1.3.87 For example, as noted in [REP5-050], in the North Wales Wind Farms Connection DCO, both the Examining Authority and the Secretary of State expressly declined the Welsh Government's request to be the appeal body within the DCO. In that DCO, the Secretary of State was named the appeal body. The North Wales Wind Farms Project, like Swansea Bay, is an electricity NSIP. (We have attached the relevant extracts from that DCO as **Appendix 4**).

Fees

- 1.3.88 Throughout examination, IACC has stated that the fee schedule in Schedule 19 is not sufficient.
- 1.3.89 The fees that are set out in Schedule 19 are based on fees that have been imposed in other DCOs and as set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017. Horizon considers that these fees are appropriate given that the applications that are submitted to IACC for discharge will involve consideration of the applications against clear frameworks (i.e. the CoCPs or the Design and Access Statements). These will not be applications where IACC must start its consideration from scratch.
- 1.3.90 Further, as noted at the DCO ISH, Horizon has committed to providing IACC with a range of funding under the draft Section 106 Agreement in respect of monitoring and its programme office who would be involved in the discharge of requirements (refer to Schedule 16 of the draft section 106 agreement [REP5-007]. This includes:
- An annual service level contribution of £500,000 on implementation and for the duration of construction which will apply to the costs of the Programme Office (total £4.5 million);
 - An annual monitoring contribution of £60,000 per annum (total £540,000) for the duration of the construction period; and

- An annual monitoring contribution of £40,000 per annum (total £2 million) for the duration of the operational period.
- 1.3.91 It is important, therefore, for the Panel to consider these fees in light of the entire financial package that is being provided to IACC. IACC, in its Deadline 7 submission, note that this funding does not become available until the Project is implemented; while this may be the case, until such time IACC would have the benefit of the fees in Schedule 19 and then could reallocate the section 106 fees to address any internal funding gaps once the Project has been implemented.
- 1.3.92 Horizon received an alternative fee schedule from IACC on 21 March 2019 which it is currently considering and will need to discuss with IACC to understand how they have been developed. As this matter remains unresolved as at Deadline 8, Horizon may need to submit a minor update to the DCO at Deadline 9 (10 April 2019) which incorporates any changes, if necessary.
- 1.3.93 Alternative fees have been agreed with NRW and are reflected in the final DCO submitted at Deadline 8.

Timeframes

- 1.3.94 In their Deadline 5 and 7 submissions, IACC and NRW have stated that the timeframes for determining a discharge application under Schedule 19 are too short. Neither party has provided an alternative determination timeframe.
- 1.3.95 Horizon maintains its position on these timeframes as set out in [REP-019] . It is essential that the timeframes for determination of a discharge application enable the efficient construction of the NSIP, and in this respect, Horizon notes that the timeframes proposed (5 or 8 weeks) reflect the approach adopted in the Hinkley DCO. In addition, paragraph 1 of Schedule 19 provides that for both major and minor detailed requirements the determination period may be extended by agreement of both parties.

Appendix 1 – Signposting Table

#	DCO provision	Interested Party & Deadline	Horizon's Response
1.	Article 2 – 'commence' Temporary Buildings and Structures	IACC; REP5-057 -Q2.4.3	[1.2.3 – 1.2.4]
2.	Article 2 – 'commence' Scope of Definition	IACC; REP5-057 -Q.2.4.3	[1.2.5 – 1.2.6]
3.	Article 2 – 'discharging authority'	NRW and IACC; Appendix 2	[1.2.7 – 1.2.9]
4.	Article 2 – 'maintain' Applicability to associated development sites	IACC; REP4-034 - Pg71	[1.2.10 – 1.2.12]
5.	Article 2 – 'maintain' Restriction on maintenance works	Welsh Government; REP5-080 -Q2.4.4	[1.2.10, 1.2.13 – 1.2.14]
6.	Article 2 – definitions sought by NDA	NDA; Deadline 7 submission	[1.2.15 – 1.2.16]
7.	Article 5	Welsh Government; Deadline 7 submission	[1.2.19 – 1.2.20]
8.	Article 9	NDA; Deadline 7 submission	[1.2.23 – 1.2.26]
9.	Article 10	IACC; REP4-034 -Pg 72; REP5-057 -Q2.4.5	[1.2.28 – 1.2.29]
10.	Article 29	NDA; Deadline 7 submission	[1.2.31]
11.	Article 31	IACC; REP5-057 -Q2.4.8	[1.2.33 – 1.2.35]
12.	Article 74	IACC; REP5-057 -Q2.4.9	[1.2.37]
13.	Article 84	Welsh Government; Deadline 7 submission	[1.2.39 – 1.2.40]
14.	New article regarding restoration	Welsh Government; REP4-053 - Para 39	[1.2.42 – 1.2.46]
15.	Schedule 1 – Item (p) Removal of 'expedient'	IACC; Deadline 7 submission	[1.3.2 – 1.3.4]
16.	Schedule 1 – Item (p) Maximum Parameters	Welsh Government; Deadline 7 submission	[1.3.2, 1.3.5 – 1.3.6]
17.	Schedule 3 – Use of Tailpieces	Welsh Government; REP4-053 - Para 24	[1.3.7 – 1.3.8]

18.	PW2 – Phasing Strategy Discharging Authorities	NRW; REP5-081 -Para 1.1	[1.3.9 – 1.3.10]
19.	PW2 – Phasing Strategy Securing Mechanism	IACC; Deadline 7 submission	[1.3.11 – 1.3.12]
20.	PW3 – Construction Method Statement	NRW; REP5-081 -Para 1.1.10	[1.3.14]
21.	PW7 – Wylfa Newydd CoCP and Schemes	NWP; REP5-073 -Q2.4.12	[1.3.16]
22.	PW7 Protest Management Scheme	NWP; Deadline 7 submission	[1.3.18 – 1.3.19]
23.	PW7 Community Safety Management Scheme	NWP; REP5-073 -Q2.4.19 Deadline 7 submission	[1.3.21]
24.	PW8 Workforce Behaviour - Approval of Codes of Conduct	NWP; REP5-073 -Q2.4.17 IACC; REP5-057 - Q2.4.17 NWFRS; REP5-087 - Q2.4.17	[1.3.23 – 1.3.27]
25.	PW8 Workforce Behaviour - Enforceability of WMS	Welsh Government; REP5-080 - Q2.4.17	[1.3.29]
26.	PW8 Workforce Behaviour - Approval of revisions	NWP; Deadline 7 submission	[1.3.31]
27.	PW9 – Date of final commission	Welsh Government; Deadline 7 submission	[1.3.33]
28.	SPC12 – Access	NWP; REP5-073 -Q2.4.27	[1.3.35 – 1.3.37]
29.	WN1 – Main Power Station Site AIL Management Scheme	Welsh Government; NWP; Deadline 7 submission	[1.3.39]
30.	WN1 – Main Power Station Site Consultees	NWP; Deadline 7 submission	[1.3.41]
31.	WN1 – Overarching Construction Drainage Scheme Sewage Treatment Plant	IACC; Deadline 7 submission	[1.3.43]

32.	WN1 – Overarching Construction Drainage Scheme Drainage within Tre'r Gof	NRW; Deadline 7 submission	[1.3.45 – 1.3.47]
33.	WN1 – Traffic Incident Management Scheme Application to Work No 12 and consultees	IACC; Deadline 7 submission	[1.3.49 – 1.3.51]
34.	WNDA Archaeological Mitigation Scheme	Welsh Government; Deadline 7 submission	[1.3.53]
35.	WN1[A] and [B]	IACC; Deadline 7 submission	[1.3.55]
36.	WN11 – Landscape and habitat management schemes	IACC; Deadline 7 submission	[1.3.57]
37.	WN15 and WN16 WNDA Parking	IACC; Welsh Government; Deadline 7 submission	[1.3.59 – 1.3.60]
38.	WN20 – Site Campus Parameters	IACC; REP5-057 -Q2.4.33	[1.3.62]
39.	PR5 – Operational Parking	Welsh Government; Deadline 7 submission	[1.3.64]
40.	LC1 – Logistic Centre sub- CoCP and Schemes	Welsh Government; Deadline 7 submission	[1.3.66 - 68]
41.	Grampian Condition and restriction on Site Campus occupancy	Land and Lakes; REP4-036 -Para 4.14	[1.3.70]
42.	Tern compensation	NRW; Deadline 7 submission	[1.3.72]
43.	Construction Traffic Management Strategy	IACC; NWP; Throughout examination	[1.3.74]
44.	Operational Travel Management Strategy	NWP; REP5-073 -Q2.4.30; Deadline 7 submission	[1.3.76]
45.	MOLF Operational Plan and Site Security Plan	NWP; REP5-073 - Q2.11.5/6; Deadline 7 submission	[1.3.78 – 1.3.80]
46.	Schedule 15 – Protective Provisions - Network Rail	Network Rail; Submission at DCO ISH 06/03/19. Appendix 3	[1.3.83 – 1.3.85]
47.	Schedule 19 – Appeal Body	Welsh Government; Submissions at ISHs in March 2019.	[1.3.87 – 1.3.88]
48.	Fees	IACC; Submissions at ISHs in March 2019.	[1.3.89 – 1.3.94]

49.	Timeframes	IACC; Deadline 7 submission NRW; REP5-081- Para 1.1.15	[1.3.95 -1.3.96]
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**Appendix 2 – Joint Paper from IACC and NRW regarding Marine
Jurisdiction**

Wylfa Newydd DCO - Co-ordinated working in the intertidal area – Position paper

Following the issue specific hearings on the Wylfa Newydd DCO in January 2019, the Isle of Anglesey County Council (IACC), Natural Resources Wales (NRW) and Welsh Government (WG) were asked if they could discuss and preferably agree who should be the discharging authority for the intertidal area.

The Panel also asked IACC, NRW and WG to clarify how IACC and NRW would co-ordinate their different responsibilities in that area. This paper sets out the agreed position of the parties on those matters.

The issue arose because IACC was not content to surrender its discharging responsibility as local planning authority for the land between mean high water springs (MHWS) and mean low water (MLW) known as the intertidal area. IACC considered that the substantial nature of the works in the intertidal area, and their extensive physical integration with works which are also located landward of MHWS could have significant landscape and visual impacts. Such impacts are controlled through the planning regime,

However, NRW notes that works constructed seaward of MHWS would be controlled through the marine licensing regime, in addition to the planning regime. Irrespective of the DCO, NRW would be the relevant Licensing Authority (on behalf of the Welsh Ministers) for the Marine Licence for works seaward of MHWS. As a result, NRW is likely to be dealing with applications to discharge Marine Licence conditions that give rise to the same or similar issues that would arise when the DCO requirements are sought to be discharged. Removing NRW's responsibility in the intertidal area for the purposes of the DCO would be unacceptable in light of this.

The parties agree that there is a legitimate planning authority interest in the intertidal area and at the same time a legitimate marine licensing authority interest. Given the overlap, consideration was given to having joint discharging authorities however it was determined that was likely to be unworkable in practice.

In order to resolve this issue during the Wylfa Newydd Examination, the parties have agreed that IACC will give up its planning role in the intertidal area and NRW will be the sole discharging authority seaward of MHWS subject to the following:

- 1 IACC are to be prescribed in the DCO as a required consultee on any and all applications to discharge DCO requirements which include any element of Works in the inter-tidal area.
- 2 NRW are to be prescribed in the DCO as a required consultee on any and all applications to discharge the landward elements of requirements which extend over MHWS. This is in addition to any other consultation requirement.
- 3 Where any work includes both landward and intertidal elements or in any other way extends across MHWS, discharge of the related requirements is required from both IACC and NRW to the extent of their respective interests and there should be added to the DCO an explicit provision that prohibits the undertaker carrying out or commencing any part of any such works until both authorities have issued approvals.
- 4 The WG and IACC consider that Welsh Ministers should be the appeal body for any refusal under a requirement.

IACC and NRW will conclude a memorandum of understanding governing how their relationship on applications for the inter-tidal area or works which extend over MHWS will operate in practice in order that there is certainty as to how the respective interests will be protected.

For completeness, it is noted that, under the DCO, there is no enforcement authority for the works seaward of MHWS. For the Marine Licence regime, the Marine Enforcement Authority function is undertaken by the Welsh Ministers, not NRW.

March 2019

Appendix 3 – Network Rail standard protective provision

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

19. The following provisions of this Part have effect, unless otherwise agreed in writing between the promoter and Network Rail and, in the case of paragraph [33] any other person on whom rights or obligations are conferred by that paragraph.
20. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his or her powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"promoter" means the undertaker as defined in article 2 (interpretation) of this Order;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

21. (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the promoter with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

22. (1) *[The promoter must not exercise the powers conferred by—*

(a). Article 6 (Maintenance of the authorized development)

(b). Article 7 (Authorisation of use)

(c). Article 18 (Access to works)

(d). Article 22 (Discharge of water)

(e). Article 24 (Authority to survey and investigate the land)

(f). Article 25 (Compulsory Acquisition of land)

(g). Article 27 (Compulsory Acquisition of rights)

(h). Article 29 (Private rights)

(i). Article 35 (Temporary use of land for carrying out the authorized development)

(j). Article 36 (Temporary use of land for maintaining the authorized development)

(k). Article 37 (Statutory undertakers)

(l). Article 42 (Rights over land)

(m). Article 75 (Felling or lopping of trees and removal of hedgerows)]

[Note: list of articles at para 22(1) to be considered by further by NR]

or the powers conferred by section 11(3) of the 1965 Act, in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The promoter must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The promoter must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 37 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The promoter must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

23. (1) The promoter must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which

such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and the grounds of such disapproval the promoter may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the promoter. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the promoter that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the promoter in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the promoter.

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the promoter, if Network Rail so desires, and such protective works must be carried out at the expense of the promoter in either case without unnecessary delay and the promoter must not commence the construction of the specified works until the engineer has notified the promoter that the protective works have been completed to his or her reasonable satisfaction.

24. (1) Any specified work and any protective works to be constructed by virtue of paragraph 23(4) must, when commenced, be constructed—
- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 23;

- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the promoter must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the promoter or its servants, contractors or agents.

25. The promoter must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

26. Network Rail must at all times afford reasonable facilities to the promoter and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the promoter with such information as it may reasonably require with regard to such works or the method of constructing them.

27. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the promoter reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the promoter must pay to Network

Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the promoter, Network Rail gives notice to the promoter that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the promoter must, notwithstanding any such approval of a specified work under paragraph 23(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 1.1(a) provide such details of the formula by which those sums have been calculated as the promoter may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the promoter to Network Rail under this paragraph.

28. The promoter must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the promoter as provided by paragraph 23(3) or in constructing any protective works under the provisions of paragraph 23(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway

- property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
 - (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

29. (1) In this paragraph-

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 23(1) for the relevant part of the authorised development giving rise to EMI (unless the promoter has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the promoter must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the promoter's compliance with sub-paragraph (3)-

- (a) the promoter must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 23(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the promoter all information in the possession of Network Rail reasonably requested by the promoter in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the promoter reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 23(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the promoter must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the promoter must afford reasonable facilities to Network Rail for access to the promoter's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the promoter for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the promoter any additional material information in its possession reasonably requested by the promoter in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the promoter reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the promoter in accordance with paragraph 24.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 33(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 1.1(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 78 (Arbitration) to the Secretary of State shall be read as a reference to the Institution of Electrical Engineers.

30. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the promoter informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the promoter must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

31. The promoter must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or

illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

32. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the promoter, be repaid by the promoter to Network Rail.

33. (1) The promoter must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 40 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the promoter must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the promoter from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the promoter reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the promoter.

(3) The sums payable by the promoter under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any

sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

34. Network Rail must, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the promoter is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 33) and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

35. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the promoter under this Schedule or increasing the sums so payable.

36. The promoter and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the promoter of—

(a) any railway property shown on the works and land plans and described in the book of reference;

- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

37. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

38. The promoter must give written notice to Network Rail if any application is proposed to be made by the promoter for the Secretary of State's consent, under article 9 (transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

39. The promoter must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a form specified by Network Rail.

Appendix 4 – Extracts from North Wales Connection DCO



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

North Wales Wind Farms Connection

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

**Lillian Harrison BSc, MSc, PhD, MRTPI, MCIWM
John Lloyd-Jones OBE FRAgS Hon.FLI
Jo Dowling BA, MPHIL, MRTPI**

28 April 2016

requirements in relation to the expiry of development consent (Requirement 4) and decommissioning and site restoration (Requirement 5) require a decommissioning and site restoration scheme to be submitted to the relevant Local Planning Authorities not less than 12 months before the expiry of the consent. This has been incorporated into the Panel's recommended draft DCO at Requirement 17(1). The Clocaenog Order requirement for decommissioning (Requirement 5) identified the elements of the development that must be removed and the disturbed area to be restored. The Panel has used this approach to modify the defined aspects of the scheme that have to be included in the submitted scheme for decommissioning and restoration of the proposed development. Requirement 17(2) includes the removal of works 1A and 1B, the restoration of the Order land, a methodology for the ecological management of sensitive habitats during the decommissioning and restoration works, a methodology for the management of traffic during decommissioning and restoration and a new part of Requirement 17 has been added (Requirement 17(3)) which requires the decommissioning and restoration to be completed in accordance with the approved scheme within the timescale set out in the approved scheme.

**Applicant's final draft development consent order for option B
[REP11-020] Schedule 2, proposed new Requirement 19
(Expiry of Development Consent)**

- 9.15.7 The Clocaenog Forest Wind Farm Order 2014 requirement for the expiry of development consent (Requirement 4) states that "*The development consent granted by this Order expires 25 years after the first export date*" and then goes on to explain how details of the first export date are to be provided to the LPA. However, the Panel considers that imposing a similar requirement for the NWWFC Order, expiring 25 years after the first export date could prohibit other potential developers and operators of wind farms for the other two wind farms that were to be served by this development, from coming forward. The Panel has concluded that imposing a requirement for the expiry of the development consent, 30 years after the date of the Order would be reasonable and proportionate.

**Applicant's final draft development consent order for option B
[REP11-020] proposed Schedule 10 Article 40 (3) (Appeals)**

- 9.15.8 The Panel notes the comment from the Welsh Government on this matter [REP11-008]. The Panel is satisfied that the Secretary of State is the decision maker under PA2008 for this NSIP and therefore any appeal would be determined by relevant Secretary of State. The Panel concludes that there should be no changes to the wording of this Schedule.



APPENDIX A

Llywodraeth Cymru
Welsh Government

Sent by email to steven.edwards@spenergynetworks.co.uk

Steven Edwards
Environmental Planning
SP Energy Networks
3 Prenton Way
Prenton
CH43 3ET

28 January 2016

Dear Steven

A Draft Statement of Common Ground (SoCG) in relation to the application by SP Manweb Plc ("SP Manweb") for development consent under the Planning Act 2008 (the "Application") for a 132kV Overhead Line together with required pedestrian and vehicular accesses, temporary construction compound, construction laydown areas, mitigation planting and other integral works ("Proposed Development")

REQUEST FOR COMMENTS FROM THE WELSH GOVERNMENT ON THE APPLICATION FOR THE PROPOSED NORTH WALES WIND FARM CONNECTION PROJECT- EN020014

Thank you for submitting the Draft Statement of Common Ground to Welsh Government (WG) for discussion.

Planning – the Planning Inspectorate published a number of questions on 3 August 2015, many of which were aimed at WG and would have a bearing on the claims made in the draft SoCG.

Given this wider context we are not comfortable providing an isolated view on the content of the SoCG in relation to planning matters as the two items need to be considered together. See our letter to PINS dated August 2015.

4.3 Policy and Legislative Context

Whilst we agree the primary purpose of the DCO is the Overarching National Policy Statement for Energy (EN-1) and the Electricity Network National Policy Statement (EN-5) the matter of whether the Planning Statement has identified all material planning policies at UK, National, and local level is a matter for the decision maker to determine to their own satisfaction, as is the compliance or otherwise of the proposed development with the policy tests.



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4.4 Content of the Environmental Statement

Historic Environment

Cadw has agreed the results and the findings of the heritage assessment and have no particular concerns. The route has been informed by the heritage assessment and avoids any direct impacts on designated historic assets whilst minimising any setting impacts on Scheduled Monuments / historic landscapes. The wooden pole and line is unlikely to raise any significant issues in this case.

4.4 Traffic and Transport

Having had sight of the plans the route does not cross any trunk roads as the A55(T) is beyond the northern limits of the scheme. Therefore, Welsh Government, as trunk road authority, is not affected and has no comments. In terms of a planning response Welsh Government would therefore issue a 'no direction', i.e. it would not direct any planning conditions to be included in any permission.

Abnormal Indivisible Loads (AIL) would only be associated with either the wind farm components (turbine / blades) or the substation (new transformer). As the application only appears to be the overhead cables, WG don't foresee any AIL issues and therefore the comments remain for information only.

4.5 Content of the Habitats Regulations Assessment No Significant Effects Report

We note concerns from NRW on a significant number of points and possible discrepancies on cumulative effect (6.15). Once NRW is content, we would have no further concerns except on the issue of Greenland Whitefronted Geese (GWfG) (6.1, 6.2, 6.5, 6.6). Since the previous consultation two GWfG were sighted in Shropshire last winter. There are similar occasional sightings over a wide area of North and West Wales as far south as Llanelli and Marloes Mere (Pembrokeshire).

GWfG migration includes a feeding stop-over in Iceland, so the approach to the British Isles is not as asserted in the NSER, but from the north; return is by that route. Radio tracking by C Penycuick of Bristol University for the BBC of birds overwintering on the Solway showed them to be using the corridor between the mainland and Western Isles. On that basis landfall would be plausible at any point on the north Wales coast, and might include birds en route to the Dyfi or beyond. On a number of occasions groups from the Dyfi population have been observed approaching the Dyfi SPA from the east. However, to our knowledge, there has been no monitoring of such movements over inland North Wales.

General precautions in respect of large birds would probably minimise any risk to this endangered and iconic species.

WG is now funding some tracking work on Greenland White-fronted Geese to help clarify some of the uncertainties around flight patterns for this species.

WG suggest the Manweb contact RSPB and/or NRW about engaging with the research as it may have some relevance to this and other energy projects.

However, we note Denbighshire County Council's suggestion that all or part of the line should be undergrounded on the grounds of visual amenity. Any proposal to underground should take full account of the increased nature conservation implications of so doing, including the implications for habitat disruption, not only during construction, but also in later maintenance, repair, renewal etc.

In the light of the publicity attracted by the unfortunate electrocution of an osprey in this area last year, WG would ask that due regard be given to such risks when selecting design details of the support structures, insulators, spacing between components, etc.

SP Manweb should note that the Environment (Wales) Bill was introduced by the Assembly in May 2015 and is expected to become law in April 2016. When it does, it will enhance the biodiversity duty of public authorities in Wales above the current provisions of the NERC Act. This should be borne in mind when preparing material for decision-making beyond April.

From a Nature Conservation Policy perspective WG has no other concerns about the SoCG as drafted, provided the views and advice of NRW continue to be given due regard.

4.6 Content of the Draft Development Consent Order

4.6.1 Ref 1, 2, 3 - WG have the following comments and therefore do not agree

Article 9 – Application and modification of the Hedgerow Regulations 1997

The Hedgerow Regulations 1997 (S.I. 1997/1160) were made under section 97 of the Environment Act 1995. The power in section 97 was devolved to the Welsh Ministers under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Therefore the vires of including such a provision in the DCO to be made by the Secretary of State is questioned. Given that the regulations are devolved its inclusion could be perceived to be undermining the boundaries of the devolution settlement.

Schedule 10 Article 3 (Appeals)

This drafting requires that any appeal must be submitted to the Secretary of State rather than the Welsh Ministers. WG would wish to query why the applicant considers that an appeal made against a local planning authority in Wales should be heard by the Secretary of State rather than the Welsh Ministers?

Schedule 1 (page 25) Work No. 2A(c)

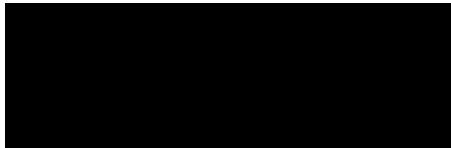
This includes provision for “works to alter the position of existing services” which is defined in paragraph 2.5.3 and 2.6 of the EM to comprise lower voltage electrical

lines which comprise part of the “wider project” and do not form part of the DCO. WG would welcome some clarity on this point of whether the lower voltage power lines (which would not form a NSIP as they are under 132kv) are being, or are not being, included within the DCO?

Transport - According to the submitted information the proposed works do not cross any trunk roads, therefore a no direction response is issued from the Transport Division.

CADW - No further comments from Cadw regarding designated scheduled monuments, however, Manweb will need to enter into a separate SoCG with Clwyd Powys Archaeological Trust on non-designated assets.

Yours sincerely



Gwenllian Roberts
Deputy Director - Energy Wales Unit

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