

# **Wylfa Newydd Project**

## Post Oral Hearing Summaries for

### Friday 8th March

PINS Reference Number: EN010007

---

14 March 2019

Revision 1.0

Examination Deadline 7

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

[This page is intentionally blank]

## 1 HORIZON NUCLEAR POWER WYLFA LIMITED – WYLFA NEWYDD DCO PROJECT – DEVELOPMENT CONSENT ORDER APPLICATION

### 1.1 Written summary of Horizon's oral submissions at the Third Issue Specific Hearing on Biodiversity and HRA held on 8 March 2019

#### *Introduction*

1.1.1 This note summarises key submissions made by Horizon at the Third Issue Specific Hearing on Biodiversity and HRA issue specific hearing on 8 March 2019. The items refer to the final agenda prepared by the Examining Authority (ExA). The items refer to the final agenda prepared by the Examining Authority (ExA) on 26 February 2019 (the "Agenda").

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
Matters carried over from the 4 March 2019 agenda, and other additional matters	<p>The Examining Authority raised queries regarding mitigation measures relating to as pre-demolition checks for barn owl in the structures identified for demolition, and in respect of fencing around Dame Sylvia Crowe's Mounds. Horizon will consider how such measures can be clarified in the control documents submitted at Deadline 8 (25 March 2019). Horizon will also submit a post-hearing note clarifying the measures relating to air quality and botanical modelling at Cae Gwyn SSSI.</p> <p>In respect of comments by NRW on impacts to bog habitats, Mr Steven Byrne on behalf of Horizon noted that Horizon has assessed receptors as agreed previously with NRW. A marginal exceedance was modelled at Cae Gwyn SSSI, which is considered to be a minor adverse effect. There is a minor disagreement in that NRW thinks it could be higher. Counsel for Horizon, Michael Humphries QC, noted that this is a marginal effect to be balanced against the national need in the overall planning balance.</p> <p>In response to comments from NWWT regarding CHEG fungi within the Site Campus footprint, Dr James Cook confirmed that a Technical Summary Report was produced [APP-168] along with a Phase 1 habitat survey for the area in question. These studies showed the presence of a mixture of poor and semi-improved grassland, and it was only the northern area of Wylfa Head (which has not been subject to agricultural impacts) that has importance in terms of fungi habitat. In addition, Dr Cook noted that an ecologist present on the site (who has a particular interest in fungi) has never observed anything of note in the area affected by the Site Campus. The Site Campus would not affect CHEG fungi.</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
	<p>In response to a question from the Examining Authority, Mr Rob Bromley confirmed that the potential for predation of fish kill from the fish recovery system has been considered in the Environmental Statement and was considered negligible.</p>
<b>Item 3 – HRA</b>	
a. Anglesey Terns Special Protection Area (SPA)	<p>Horizon's position is that its observed evidence, supported by the scientific literature, shows that there is no adverse effect on the integrity of the Anglesey Terns SPA and that this has been shown beyond reasonable scientific doubt.</p> <p>This is because:</p> <ul style="list-style-type: none"><li>• There are absolute noise limits imposed on the project for blasting of 60dBA at the tern colony. That is about the sound level of normal conversation.</li><li>• All other noise on the site must be 59 dBA or less (1 hour average).</li><li>• By way of specific examples, the Shadow HRA ([APP-050], paragraph 10.3.36) confirms that there was no tern response to:<ul style="list-style-type: none"><li>◦ Slamming of tractor door - a spike of 75.6 dB</li><li>◦ Slamming of grain store door - a spike of 65.3 dB</li></ul></li><li>• Further controls on noise are imposed on the project. For example, even a 60dBA blasting noise event can only occur three times a day.</li><li>• These noise controls are further reduced at night and during the tern establishment period.</li><li>• In addition to the above, the proposed real time monitoring systems (the Red and Amber system set out from paragraph 11.4.5 in the Main Power Station Site Sub-CoCP [REP5-023]) will ensure that even when noise gets to 'amber' levels, mitigation action occurs. This system has been effectively implemented at the Olympic Park development and ensures real time feedback and learning as to noise management on a site.</li><li>• Blasting on site only occurs during the first two years of main construction.</li><li>• Only confined blasting is undertaken; that means it will occur in drilled and packed holes which further limits sound impacts.</li><li>• At its closest, blasting occurs at over a kilometre from the tern site.</li></ul>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
	<ul style="list-style-type: none"><li>Highly precautionary modelling (i.e. all plant and equipment operating at the closest boundary edge to the tern colony) has predicted noise levels lower than 59 dBA. The reality is that the plant will be spread out, and not all operating at once, so the noise levels will be lower than the worst case assessed.</li></ul> <p>All observed behaviour over two years demonstrates that the Anglesey terns do not react in a material way to noise events of 60dBA or even louder. Further, the reviewed scientific literature supports this observed position.</p> <p>While Horizon respects NRW's position as the statutory nature conservation body, here, no evidence is provided or sought to be provided by NRW to evidence that there is an adverse effect on Anglesey Terns SPA. To the contrary, Horizon knows the noise levels at which terns react and are disturbed, and has imposed extensive and highly precautionary controls on the Project to ensure that these levels will not be breached. It has therefore demonstrated that there will be no adverse effect on the integrity of the Anglesey Terns SPA.</p> <p>NRW's statement that there is no directly comparable scientific literature and therefore there is no evidence that there would not be an effect is rejected for the reasons set out above: firstly there is analogous scientific literature, and secondly the observed evidence is that a noise limit of 60dBA will not disturb the Anglesey terns.</p> <p>NRW's has made reference to the implications for the Wylfa Newydd DCO Project in light of the Mynydd y Gwynt decision. This is unhelpful. In that case the project promoter was unable to provide additional data on the effects of the project on red kite, and did not provide any information to support a Stage 3 and 4 assessment. It should also be noted that the Secretaries of State in the Burbo Bank and Tilbury 2 DCO applications, respectively, disagreed with relevant statutory nature conservation bodies in concluding there were no adverse effects on the integrity of European designated sites in relation to those applications.</p> <p>NRW has clearly stated that no amount of evidence will convince it to change its view that there could be an effect on the Anglesey terns. Further NRW refused permission to permit Horizon to undertake a controlled test blast to demonstrate its position. Nevertheless, Horizon has provided extensive data as set out in the Shadow HRA and supporting materials [APP-050, APP-051, AS-010 and REP2-007]. Further, Horizon has provided its Stage 3 and 4 reports [REP5-044, REP5-045, and REP5-046], notwithstanding its position that these are not required.</p> <p>In line with Mynydd y Gwynt Horizon accepts that the burden of proof effectively lies with it, and that the Secretary of State cannot conclude that the project will not adversely affect the integrity of the relevant European Site without sufficient information. As summarised above however (and as set out in the Shadow HRA), Horizon's position is that it has provided sufficient evidence that the project will not have any real (as opposed to hypothetical) adverse effects on the Anglesey terns.</p> <p>Horizon considers that, on the very considerable evidence, the Secretary of State should be satisfied that there is no</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
	<p>adverse effect on the integrity of the Anglesey Terns SPA as a result of the Wylfa Newydd Project and that this has been shown beyond reasonable scientific doubt.</p> <p><b>Contingent obligation to secure tern compensation sites</b></p> <p>Horizon has not included drafting of a DCO requirement for the provision of tern compensation sites to date as it is does not agree that compensation sites are required; the provision of the Stage 3, Stage 4 and compensatory measures papers [REP5-044, REP5-045, and REP5-046] into examination were provided at the request of the ExA without prejudice to that position.</p> <p>Nevertheless, Horizon will draft a DCO requirement for the delivery of tern compensation sites which could be included by the Secretary of State in the DCO should he determine that is required.</p> <p>Horizon will not know the Examining Authority's position on this until 27 March 2019 – which is after the date of final submission of the final draft DCO. As such, Horizon will discuss the form of a DCO requirement in advance with NRW but is not proposing to include that into the DCO pre-emptively. It can be provided alongside comments on the REIS at Deadline 9 (10 April 2019). The SoS can then determine whether he will include it or not.</p> <p>Horizon considers use of a DCO requirement is more appropriate than including a contingent requirement in the s106 agreement (which is also to be finalised by Deadline 8 (25 March 2019) which would be switched on or off depending on what the SoS decides. Instead, by following the DCO requirement route, the requirement can be included - or not - as needed. This will be far less confusing when interpreting the DCO in the future.</p> <p>Broadly the requirement will:</p> <ul style="list-style-type: none"><li>• Define suitable "Tern Compensation Sites". This will include the three sites promoted in [REP5-046] (Glan y Môr and Morfa Madryn Reserves, Abermenai Point, and 'Tern Island' (Inland Sea)) which are all owned by public authorities, as well as the Dulas Bay site (for which heads of terms have been signed). In addition, alternative suitable sites will be permitted with NRW's agreement.</li><li>• Define a "Tern Compensation Scheme" to state the works required on the tern compensation sites to make them suitable for breeding Sandwich tern (<i>Sterna sandvicensis</i>), common tern (<i>Sterna hirundo</i>) or Arctic tern (<i>Sterna paradisaea</i>). This scheme will be in accordance with [REP5-046].</li><li>• Require provision of at least two Tern Compensation Sites, in accordance with the Tern Compensation Scheme, prior to undertaking works on the WNDA which could disturb terns.</li></ul> <p>Horizon has considered in its Stage 4 report [REP5-046] a number of potential compensation sites. The report</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
	<p>demonstrates that adequate compensation can be delivered at these sites. Three are in public ownership and all relevant public bodies have shown a willingness to work with Horizon to implement the compensation sites. We can expect that public bodies will act as responsible public bodies in doing so. Heads of terms have been agreed with the private owner of the fourth site.</p> <p>Horizon notes that while productive discussion have been ongoing for some time, it has not bought or entered into land agreements in respect of sites because, fundamentally, it does not agree that they are required. Nevertheless, Horizon notes that in defining the "Tern Compensation Sites", REP5-046 demonstrates four sites which have been taken through further design work and Horizon has identified a number of potentially suitable sites. The draft requirement will not therefore limit the project to utilising only these four sites which would give rise to an unacceptable ransom position.</p>
b. Cemlyn Bay Special Area of Conservation (SAC)	<p>NRW noted that they will provide further comments to Horizon urgently on Horizon's Deadline 6 (19 February 2019) submission, but they are optimistic that they will be able to conclude no adverse effect. Horizon will work with NRW and respond to these comments as soon as possible. The Marine Works sub-CoCP will be updated at Deadline 8 (25 March 2019) to reflect the mitigation as set out in the Deadline 6 (19 February 2019) submission (and taking into account any comments received from NRW).</p> <p>While Horizon's focus is on trying to agree things with NRW as the statutory body, Horizon will engage with National Trust as landowner regarding mitigation options, and will be holding further conversations with the eNGOs in the following week.</p> <p>Counsel for Horizon confirmed that mitigation relating to the approach of working the outer faces of Mound E will be secured in the control documents at Deadline 8 (25 March 2019).</p> <p>In response to a question from the Examining Authority, Counsel for Horizon confirmed that Hitachi's suspension decision does not affect the IROPI case for the Project. It does not affect the urgent need for new nuclear power.</p> <p>In response to comments by Linda Rogers, Counsel for Horizon confirmed that the suspension does not have an impact on matters relating monitoring or changes in circumstances over time. The implementation period sought by Horizon is consistent with normal planning practice, with the addition of one year to take into account the proposed Article 84 mechanism which creates the need to satisfy the Secretary of State that the undertaker has the appropriate funds. There will be no subsequent need for the consideration of IROPI post-grant of the DCO. The point that government policy may change is not a matter that should be considered in the Examination.</p> <p>Mr Bromley noted that, for SSSI ecological compensation sites, Horizon will continue groundwater hydrological monitoring to provide a year's worth of data.</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
<b>Item 4 – Marine environment</b>	
a. Biological quality at the Skerries Coastal water body	Mr Stuart Smith, for Horizon, noted that Horizon is awaiting a formal written response from NRW at Deadline 7 (14 March 2019) to the Water Framework Directive assessment [REP6-024] and derogation information [REP6-025] submitted at Deadline 6 (19 February 2019). Horizon will respond to this as soon as possible.
d. Cumulative impacts on intertidal and subtidal habitats	NRW noted that they accept that no additional mitigation measures can be implemented in respect of intertidal and subtidal habitats, and that residual effects are a matter for the Secretary of State to weigh in the planning balance. Mr Bromley, for Horizon, noted Horizon has provided a substantial mitigation package, the objective of which is to reduce a significant effect to non-significant effect. It is acknowledged there is a residual effect, but Horizon does not consider this to be significant.
f. Updated modelling for impacts on marine mammals	Ms Sian John noted that a draft Marine Mammal Mitigation Plan (MMMP) has been submitted to NRW for their comment. The mitigation proposed in the draft MMMP will be included in the Marine Works sub-CoCP when an updated version is submitted at Deadline 8 (25 March 2019). The draft MMMP reflects the requirement to provide for monitoring out to 800m. The Examining Authority asked whether there will percussive piling be carried out in the marine environment. The marine environment includes both dry and wet elements. The basis of design, as assessed in Chapter D13 of the Environmental Statement [APP-132] does not include piling in the wet environment, instead there is percussive and rotary drilling. All piling in the marine environment is dry, either on the breakwater for the coffer dam or behind in the dry excavation areas. In response to a question from the Examining Authority regarding the use of drilling rigs, Mr Bromley confirmed that there will be a maximum of two rigs operating in the wet marine environment simultaneously (resulting in underwater noise), although there will be more in the dry marine environment (i.e. on the breakwater and behind the coffer dams resulting in airborne noise).
<b>Item 6. Climate Change</b>	
a. assessment of the DCO application against the UK Climate	Mr Phil Raynor, for Horizon, noted that Horizon has provided further information on where within the DCO Application documents reference has been made to sea level rise and climate change impacts and assessments. This is presented in Appendix 1-1 of Horizon's Deadline 5 (12 February 2019) Responses to actions set in Issue Specific Hearing on 11

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
Projections 2018	<p>January 2019 [REP5-056].</p> <p>The conclusions of the assessment are that:</p> <ul style="list-style-type: none"> <li>• In many cases, the information presented in UK Climate Projects ('UKCP') 09 remains the best available at the present time;</li> <li>• UKCP18 does influence rainfall intensity, peak river flows, wind speed (and by implication wave height) but guidance is not sufficiently detailed to enable an update of quantitative assessments;</li> <li>• UKCP18 impacts on sea level rise are similar to those in UKCP09 up to the 2090's, meaning that assessments using UKCP09 remain appropriate;</li> <li>• UKCP18 indicates that UKCP09's H++ scenarios remain suitable as high-end and plausible (but unlikely) scenarios, meaning that assessments using these remain valid.</li> </ul>
<b>Item 7. Other consents and licences</b>	
a. The Applicant will be asked to provide an update	<p>Counsel for Horizon noted that an update on other consents and licences was submitted at Deadline 6 (19 February 2019) [REP6-017]. The key changes are that:</p> <ul style="list-style-type: none"> <li>• Horizon has withdrawn the application for a Nuclear Site Licence under the Nuclear Installations Act 1965.</li> <li>• Horizon has also withdrawn the Environmental Permit Applications to operate a combustion activity, a water discharges activity and a radioactive substances activity.</li> <li>• The applications for a water discharges activity during construction and a marine licence are still being determined by NRW.</li> <li>• The Town and Country Planning Act 1990 Application for site preparation and clearance has also been withdrawn.</li> </ul>
<b>Other matters</b>	
	<p>In response to questions from the Examining Authority regarding how options for the Ecological Compensation Sites (for SSSI impacts) are secured, Counsel for Horizon explained that these are contractual options to purchase.</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing
	<p>Counsel explained that it would be hard to accept or enforce an obligation to maintain the ecological compensation sites forever, but Horizon will provide further information on this in a post-hearing note.</p> <p>In response to comments from Linda Rogers regarding the spent fuel and interim waste storage facilities, Counsel explained that the undertaker would remain responsible for these under the DCO. Further, Horizon is required under section 45 of the Energy Act 2008 to have a Government approved Funded Decommissioning Programme in place before nuclear related construction of the Power Station begins. This ensures that Horizon makes prudent provision for the full cost of decommissioning and for safely and securely managing and disposing of waste, including spent fuel.</p>