

Wylfa Newydd Project

Summary Table of Amendments to the DCO

(Revision 6.0)

PINS Reference Number: EN010007

17 April 2019

Revision 6.0

Examination Deadline 10

Regulation Number: 5(2)(q)

Planning Act 2008

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

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**1 Amendments proposed to the final draft Development Consent Order
(Revision 6.0)**

1.1 Introduction

1.1.1 This document provides a commentary on changes made to the final draft Development Consent Order ("draft DCO") by Horizon Nuclear Power Wylfa Limited ("Horizon") at Deadline 10 (17 April 2019) (DCO Revision 6.0).

1.1.2 A track changed version of the revised draft DCO (Revision 6.0) against the version submitted as part of Deadline 8 (Revision 5.0) [REP8-029] and the DCO application in June 2018 (Revision 1.0) [APP-029] has also been provided. Where amendments are proposed, reference is made to the reason for the change (e.g. stakeholder response) is set out in Table 1-1.

General Notes

1.1.3 The table below refers to the original article, requirement, paragraph or schedule number in Revision 5.0 of the draft DCO [REP8-029]. Any new numbering in the revised draft DCO as at Deadline 10 is indicated in the "Amendment" column in the table below, where relevant.

1.1.4 Where “-“ is used, this indicates that the change has been identified by Horizon.

1.1.5 A large proportion of the amendments to this final version of the DCO relate to final renumbering, formatting, consistency in definitions and requirements, typographical corrections or to remove duplication within the Order (i.e. schedule titles). In particular, Schedule 21 has been renumbered as Schedule 4, and article 50 (which was a placeholder article) has been deleted, resulting in a number of articles being renumbered. These changes are shown in the track-change version of the DCO but have not been set out in this table due to their largely administrative nature.

1.1.6 In response to the ExA's R172.5 [PD-021], Horizon has removed references within the DCO to "shall" and "aforesaid" and replaced with modern drafting.

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Table 1-1 Explanation of amendments made to the final draft DCO (Revision 6.0) as issued to the Examining Authority on 17 April 2019 (Deadline 10)

Provision	Source of Change	Amended, and where relevant, numbering of new provision in revised draft DCO	Reason for amendment
1. Article 2	-	The following definitions have been inserted in article 2: "Work Areas", "working days" and "Power Station Site".	New definition of "Work Area" added as this was previously undefined. Definitions of "Power Station Site" and "business days" have been moved from Schedule 3 to article 2 as these are used elsewhere in the Order and so should be in article 2.
2. Article 2 – "discharging authority"	NRW and IACC Deadline 9 submissions [REP9-037 and REP9-031]	Definition of "discharging authority" amended as follows: "discharging authority" means <u>either or both IACC and NRW, where IACC's approval is required</u> in respect of any Requirements in Schedule 3 (Requirements) of this Order relating to land above the MHWS, and <u>NRW's approval is required</u> in respect of any Requirements relating to land seaward of the MHWS;	The revised definition proposed by IACC and NRW in their Deadline 9 submissions have been accepted.
3. Article 9(4)	Horizon response to R17.2.11 [REP9-006]	Article 9(4) amended as follows: (4) Unless otherwise approved by the Secretary of State, the transferee approved under paragraph (1) is required to put in place at the time of the transfer an equivalent guarantee or <u>alternative-other</u> form of security to that in place at the time of the transfer under article 8382 (Guarantees in respect of payment of compensation) of this Order.	In response to the ExA's suggestion, "other" has replaced the term "alternative" in article 9(4).
4. Article 86 [NEW]	Discussions with Welsh Government and IACC Joint paper between NRW, the Welsh Government and IACC regarding marine jurisdiction (6 March 2019)	New article 86 inserted: <u>Marine enforcement authority</u> <u>86. For the purposes of section 173 of the 2008 Act, the Welsh Ministers will be the relevant local planning authority in respect of land seaward of the mean low water springs.</u>	Under the Planning Act 2008 IACC will be the enforcement authority for the DCO for land down to the low water mark; however, the Planning Act is silent as to who would be the enforcement authority for areas below the low water mark. In order to address this gap and align with the enforcement position under the Marine Licence, article 86 outlines that the Welsh Ministers will be the enforcement authority for any breaches below the mean low water mark. Both the Welsh Government and IACC have agreed to this new article.
5. Schedule 3 – definition of "Cadw"	Welsh Government DCO amendment document provided to Horizon on 3 April 2019	Definition of Cadw has been amended as follows: "Cadw" means the executive agency responsible for administering the exercise of functions vested in the National Assembly relating to the Welsh Government's historic environment service;	This revised definition is based on the definition provided by Welsh Government
6. Schedule 3 – definition of "Logistics Centre" and "Off-Site Power	-	The definitions of "Logistics Centre", "Park and Ride facility" and "Off-Site Power Station Facilities" have been amended to delete reference to "Logistics Centre site", "Park and Ride facility site" and "Off-Site Power Station Facilities site".	These terms have been deleted as they are not used in the Order.

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	Station Facilities" and "Park and Ride facility"			
7.	Schedule 3 – definition of "marine works consultee"	NRW and IACC Deadline 9 submissions [REP9-037 and REP9-031]	Definition of "marine works consultee" amended as follows: "marine works consultee" means IACC either or both IACC and NRW, where IACC <u>should be consulted</u> in respect of any Marine Work Requirements relating to land seaward of the MHWS, and NRW <u>should be consulted</u> in respect of any Marine Work Requirements relating to land above the MHWS;	The revised definition proposed by IACC and NRW in their Deadline 9 submissions have been accepted.
8.	Schedule 3 – definition of "Cae Gwyn SSSI Hydro-ecological Monitoring Scheme" and "Tre'r Gof SSSI Hydro-ecological Monitoring and Mitigation Scheme" (paragraph 1) and Requirement WN1 Schedule 4 (Control documents and schemes)	NRW Deadline 9 submission [REP9-037] Discussions between Horizon and NRW to combine the Cae Gwyn Scheme with the Tre'r Gof Scheme Horizon's response to NRW's Deadline 9 submission (submitted at Deadline 10)	Reference to the Cae Gwyn SSSI Hydro-ecological Monitoring Scheme deleted from the definition section of Schedule 3, and amendments have been made to the definition of "Tre'r Gof SSSI Hydro-ecological Monitoring and Mitigation Scheme", Requirement WN1 and the scope of the scheme in Schedule 4 of the Order (Control documents and schemes) to effect this change.	Protections and measures in respect of the Cae Gwyn SSSI have been included into one SSSI Monitoring and Mitigation Scheme (which covers both Tre'r Gof and Cae Gwyn). This has resulted in deletion of that definition, amendment to the definition of "Tre'r Gof SSSI Hydro-ecological Monitoring and Mitigation Scheme", Requirement WN1 and Schedule 4. NRW has agreed to both the amalgamation of the schemes into one scheme and the scope of the combined scheme in Schedule 4.
9.	Schedule 3 – WN27 – Site Campus decommissioning scheme	NWWT Deadline 9 Submission Horizon's response to NWWT's Deadline 9 submission (submitted at Deadline 10)	Requirement WN27(2)(b) amended as follows: Site Campus decommissioning scheme [...] (b) proposals to restore the site in accordance with the principles in the <u>Landscape and Habitat Management Strategy</u> which will provide LHMS including details of how <u>aim to enhance</u> the biodiversity of the site will be enhanced through the use of appropriate agricultural practices.	Amended to remove reference to "aim to enhance" as per NWWT's criticisms.
10.	Schedule 3 – PR1 - Dalar Hir Park and Ride sub-CoCP and schemes	-	Requirement PR1(4) and(5) amended as follows: <u>(4) The Park and Ride Lighting Scheme submitted under sub-paragraph (2)(b) may be submitted on a phased basis.</u> <u>(5) Construction of any phase of the Park and Ride facility must not commence until the construction lighting scheme for that phase has schemes submitted under paragraph (2) have been approved by IACC in consultation with the relevant consultee identified consultee in Part 2 of Schedule 21 (Control documents and schemes).</u> 4.	Amendments to clarify that the lighting scheme for construction and operation of the Park and Ride may be submitted in phases. Reference to the consultee has also been inserted for consistency with all other CoCP requirements.
11.	Schedule 3 – PR2 and LC2 -	-	New paragraph (5) inserted into Requirements PR2 and LC2:	New paragraphs (5) inserted to align with other requirements and make it clear that the construction of the Park and Ride and

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Detailed Design Drawings		(5) Construction of [...] must be undertaken in accordance with the plans and details approved under paragraph (2) unless otherwise approved by IACC.	the Logistics Centre must be in accordance with the approved plans.
12. Schedule 3 – PR8 – Park and Ride Decommissioning Scheme	-	<p>Requirement PR8(4)(d) amended as follows:</p> <p>(4) The detailed decommissioning scheme submitted under paragraph (3) must include details of— [...]</p> <p>(d) proposed works to return the land to agricultural use <u>for grazing, including a 1:6 gradient for side slopes of attenuation areas</u>; and [....]</p>	Requirement PR8 amended to include additional mitigation to be secured at decommissioning of the Park and Ride facility. This mitigation was included in Chapter 7 of the Environmental Statement Addendum and in SoCG discussions with NRW.
13. Schedule 3 – Requirements PW7, WN1, LC1 and OH1	Horizon's response to R17.2.23 [REP9-006]	Requirements amended to be clear that schemes must be "submitted and approved by IACC", not just "submitted for approval by IACC"	This amendment has been made to make it clear that IACC must approve the schemes before the works can commence.
14. Schedule 3 – Requirement OH2 - Detailed Design Drawings – Work No.s 8, 9, 10 and 11	-	<p>New paragraph (5) inserted into Requirement OH2:</p> <p><u>(5) Construction of any of Work No.s 8, 9, 10 or 11 must be undertaken in accordance with the samples approved under paragraph (2) unless otherwise approved by IACC.</u></p>	New paragraph (5) inserted to align with other requirements and make it clear that the construction of the A5025 Off-Line Highway Improvement Works must be in accordance with the approved samples.
15. Schedule 4 – Control documents and schemes	-	Schedule 4 has been inserted with the content from Schedule 21.	<p>Schedule 21 has been moved to Schedule 4 for the final version of the DCO.</p> <p>Minor amendments have been made to Schedule 4 to ensure that the text reflects the amendments set out in the Summary Table of DCO Amendments submitted at Deadline 8 [REP8-010] as some of the amendments were not transposed into the draft Order.</p> <p>As noted above, the scope of the Tre'r Gof SSSI Scheme has been amended following agreement with NRW.</p>
16. Schedule 15 – Protective Provisions	-	Deletion of the following definitions: "Land Plans", "NDA", "Magnox", "authorised development", "A5025 Off-line Highway Improvements", "Design and Access Statement", "Detailed Design Drawings"	These definitions have been deleted as they are already stated in article 2 of the DCO (which this Schedule is subject to). The introduction to each Part of Schedule 15 is that the definitions provided in those parts are in addition to the definitions in article 2 of the Order.
17. Schedule 15 – Protective Provisions	-	Other amendments made to protective provisions have either been agreed with the statutory undertaker (IACC and Network Rail) or provided for clarity/sense.	In response to the ExA's R172.5 [PD-021], Horizon has removed references within the DCO to "shall" and "aforesaid" and

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			<p>replaced with modern drafting. Cross-referencing has also been updated.</p> <p>Please note that the Network Rail, NDA and Magnox protective provisions are not agreed. Please see comments in the Outstanding Issues Register [REP8-004] and Horizon's Deadline 10 submissions – in particular, the Cover Letter and Other Matters Raised by Interested Parties.</p>
18. Schedule 15 – NDA and Magnox Protective Provisions	Horizon's response to R17.2.10 [REP9-006]	<p>Paragraph 29 of Part 3 and paragraph 40 of Part 4 are amended as follows:</p> <p>The undertaker must not exercise any power under this Order on any part of the NDA Site, unless the undertaker has entered into a co-operation agreement with NDA and Magnox to facilitate the decommissioning and delicensing of the NSL Site, <u>the construction, operation and decommissioning of the authorised development, and fulfilment of any statutory requirements by the parties.</u></p>	Amended to properly reflect the principles in the existing co-operation agreement between NDA, Magnox and Horizon.
19. Schedule 19 – Procedure for approvals, consents and appeals (Discharge programme) [NEW]	<p>IACC Deadline 9 submission [REP9-031]</p> <p>Discussions between IACC and Horizon in respect of fees under the Order.</p>	<p>A new paragraph 1 has been inserted into Schedule 19:</p> <p>Discharge programme</p> <p>1.—(1) The undertaker must notify the discharging authority not less than 6 months prior to the anticipated date of the undertaker making its first application to that discharging authority for discharge of a Requirement (the "discharge notification date").</p> <p>(2) No later than the discharge notification date the undertaker must provide the discharging authority with a programme of discharge of Requirements which will set out—</p> <p>(a) the proposed programme for discharging the Requirements taking into account the time frames set out in paragraph 2 of this Schedule; and</p> <p>(b) the associated relevant key dates including commencement and the start of the operational period,</p> <p>which will form the basis for identification of the schedule of and programme for the discharging authorities' discharge of the Requirements including the programme for the agreement of activity orders with IACC in accordance with paragraph 1(3) and the programme may be updated from time to time.</p> <p>(3) Following receipt of the programme of discharge of Requirements (pursuant to paragraph 1(2))—</p> <p>(a) IACC will provide the undertaker with a draft activity order or orders in respect of the major detailed requirements which will require the engagement of external consultants in order to discharge a major detailed requirement or otherwise require additional IACC resource above the resource specified in paragraph 1(4) in order to discharge a major detailed requirement within the timeframes set out in paragraph 2 of this Schedule;</p> <p>(b) any draft activity order will relate to one or more requirements and may be issued by the IACC in accordance with the programme, so that a draft activity order for each stage of the programme will be issued not less than 15 working days (or such other</p>	This text has been agreed with IACC and sets out the process that must be followed before submitting a discharge application under the DCO in order to ensure that the discharging authorities are adequately resourced.

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		<p>time frame agreed) before the application for discharge of the requirement to which it relates is due to be submitted in accordance with the programme of discharge of Requirements; and</p> <p>(c) the IACC and the undertaker will thereafter use reasonable endeavours to agree the activity order or orders within 15 working days (or the time frame agreed in subparagraph 1(3)(b)).</p> <p>(4) The undertaker is obliged to pay the costs agreed by an activity order provided that the undertaker will not be liable for any costs associated with the appointment or instruction of an external consultant without an agreed activity order in place, unless otherwise agreed in writing in advance by the undertaker.</p> <p>(5) Each activity order prepared and agreed in accordance with paragraph 1(3) must—</p> <ul style="list-style-type: none"> (a) be in the form set out in paragraph 1(6), unless otherwise agreed in writing in advance by the undertaker; (b) contain the scope of work and the terms and conditions of procuring the work from the external consultant (including rates); (c) contain invoicing and payment arrangements; (d) enable variations to the activity order which will be in the form set out in subparagraph 1(7), unless otherwise agreed in writing in advance by the undertaker; (e) enable termination of the activity order by the undertaker and suspension of costs to the undertaker under such activity order within not less than of 20 working days; (f) ensure the method of procurement of any consultant input to IACC— <ul style="list-style-type: none"> (i) delivers best value in accordance with IACC's standing orders, section 3 of the Local Government Act 1999, and complies with relevant procurement law; (ii) ensures any appointment is capable of being varied, suspended terminated on reasonable notice and in accordance with sub-paragraph 1(5)(e). <p>(6) The activity order agreed under paragraph 1(3) must be in the following form—[FORM APPENDED]</p> <p>(7) The variation order agreed under paragraph 1(3) must be in the following form—[FORM APPENDED]</p>	
20. Schedule 19 – (Applications made under Requirement)	<p>Horizon's response to R17.2.6 [REP9-006]</p> <p>Horizon's comments on IACC and NRW's responses on R17.2.6 (submitted at Deadline 10)</p>	<p>New paragraph 2(4) and (5) inserted to address concerns regarding the MOU between IACC and NRW:</p> <p>(4) Prior to the commencement of any Work which has more than one discharging authority, IACC and NRW will enter into a memorandum of understanding which will contain the following minimum requirements—</p> <ul style="list-style-type: none"> (a) the co-operation and collaboration between the IACC and NRW in the approval of discharge applications for the intertidal area or works which extend over the MHWS and the achievement of their respective statutory duties; (b) establish the consultation process that will be followed between the discharging authority and the marine works consultee; (c) the mechanisms and timeframes for resolving any inconsistencies between approvals to be granted by IACC or NRW or any differences of opinion; 	<p>Horizon has amended its position originally provided in the Deadline 8 DCO [REP8-029] and in response to R17.2.6 [Rep9-006] to no longer require that it is a party to the agreement.</p> <p>However, Horizon considers that timeframes and scope of the agreement are still required in Schedule 19, as well as the obligation for the parties to act in accordance with it when both are discharging the same requirement are necessary in order to provide certainty to Horizon and avoid future issues where</p>

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		<p>(d) opportunities for IACC and NRW to collaborate, share information and conjoin reviews of information, inspections and approvals in respect of discharge applications where possible; and</p> <p>(e) the notification process to the undertaker in respect of approvals made by IACC and NRW.</p> <p>(5) IACC and NRW will seek to agree the memorandum of understanding under paragraph 2(4) within 30 working days of notice first being served under paragraph 1(1) and provide a copy of the agreed memorandum of understanding to the undertaker for information.</p> <p>(4)(6) Where an application is made in relation to a Work that has more than one discharging authority, the discharge of those applications will be managed in accordance with a memorandum of understanding agreed between IACC and NRW in accordance with paragraph 2(4).</p>	there is a conflict between the discharging authorities that cannot be resolved.
21. Schedule 19 – (Further Information and provision of information by consultees)	NRW Deadline 9 submission [REP9-037] Horizon's response to NRW's Deadline 9 submission [REP9-037]	<p>Paragraph 3 amended as follows, and new paragraph 4 (relating to provision of information) inserted:</p> <p>Further information</p> <p>3.—(1) In relation to any application to which this Schedule applies, the discharging authority must have the right to request such further information from the undertaker as is necessary to enable it to consider the application.</p> <p>(2) If the discharging authority considers such further information to be necessary and the Requirement does not specify that consultation with a Requirement consultee is required or the discharging authority has determined it does not need to consult with any other statutory consultee in the discharge of the application submitted under paragraph 1 of this Schedule, the discharging authority must, within <u>3</u> <u>10 business days</u> <u>working days</u> of receipt of the application, notify the undertaker in writing specifying any further information required.</p> <p>(3) Where the discharging authority has determined it will consult with a statutory consultee in the discharge of the application submitted under paragraph <u>4</u> <u>2</u> or a statutory body is identified within the Requirement, the discharging authority must notify the relevant statutory consultee within 1 business day of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the relevant statutory consultee within 1 business day of receipt of such a request and in any event within 21 days of receipt of the application. issue the consultation to the consultee within 5 working days of receipt of the application. Where the consultee requires further information they must notify the discharging authority in writing specifying the further information required within 5 working days of receipt of the consultation. The discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within 3 working days of receipt of such a request. In the event the consultee does not require any further information, then they must respond to the consultation within 20 working days from receipt of the consultation notification from the relevant planning authority.</p> <p>(4) If the discharging authority does not give notification as specified in sub-paragraph <u>3</u>(2) or <u>3</u>(3), it must be deemed to have sufficient information to consider the</p>	Paragraph 3 has been amended in line with NRW's request in its Deadline 9 submission, with some small amendments (around the 20 working days for consultee comments). Paragraph 4 has been inserted at NRW's request.

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		<p>application and must not thereafter be entitled to request further information without the prior agreement of the undertaker.</p> <p>Provision of information by Consultees</p> <p>4.—(1) Subject to subparagraph (2), any consultee who receives a consultation under paragraph 2(3) must respond to that request within 28 days from receipt in order for their response to be considered.</p> <p>(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 3(3) then they must respond to the consultation within 20 days from the receipt of the further information requested for their response to be considered.</p>	
22. Schedule 19 – (Appeals)	Welsh Government Deadline 9 submission [REP9-029]	<p>Paragraph 7(11) has been amended as follows:</p> <p>(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it must be made, the appointed person must have regard to <u>Department of Communities and Local Government Circular 03/2009 guidance on appeals</u> or any circular or guidance which may from time to time replace it.</p>	Since Circular 03/2009 has been withdrawn, this now refers to the new guidance on appeals which deals with cost awards.
23. Schedule 19 – (Fees)	<p>IACC Deadline 9 submission [REP9-031]</p> <p>Discussions between IACC and Horizon in respect of fees under the Order.</p>	<p>New paragraph 5 inserted into Schedule 19 outlining a payment schedule to IACC for the costs associated with the discharge of applications under the DCO:</p> <p>Fees</p> <p>5.—(1) <u>For all applications</u> made to IACC for agreement or approval in respect of a Requirement, <u>the undertaker will pay an annual review fee to IACC in the following instalments—</u></p> <p>(a) <u>the first annual review fee of £120,000 must be paid prior to the date three months from the discharge notification date (being the "first approval date");</u></p> <p>(b) <u>the second and subsequent payments each of £120,000 must be paid annually on the anniversary of the first approval date thereafter until the undertaker has paid to IACC the first payment of the service level contribution due to be paid in accordance with paragraph 1 of Schedule 16 of the Section 106 Agreement;</u></p> <p>(c) <u>payments each of £60,000 must be paid annually from the first anniversary of date of the last payment at sub-paragraph 5(1)(b) until the start of the operational period, and</u></p> <p><u>the figures set out in paragraph 5(1)(a), (b) and (c) will be increased annually by an amount equivalent to the increase in the consumer price index from the date of this Order until the first day of January in each year.</u></p> <p>(2) <u>The annual review fee will be utilised by IACC for establishment and staffing of a discharging office whose roles will be—</u></p>	This new fee schedule has been agreed with IACC. This replaces the previous paragraph 3 in its entirety.

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		<p>(a) the discharge of minor detailed requirements within the timeframes set out in the Order; and</p> <p>(b) the management of the activity orders (in accordance with paragraphs 1(3) and (4)) to enable the discharge of major detailed requirements within the timeframes set out in the Order;</p> <p>(c) working within the programme office when established by IACC under schedule 16 of the Section 106 Agreement in relation to the Order to ensure integrated management of the authorised development.</p> <p>(3) 12 months following the date of the last payment made pursuant to sub-paragraph 4(1)(c) the undertaker must pay a fee of £1250 in respect of any application made to amend an approved control document or any approved scheme, plans, or written details approved under paragraph 2(4) of Schedule 3 (Requirements) of this Order.</p> <p>(4) The figure set out in paragraph 5(3) will be increased by an amount equivalent to the increase in the consumer price index from the date of this Order until the first day of January in each year.</p>	
24. Schedule 19 – (Interpretation)	-	<p>New definition of "Section 106 Agreement"; amendment to the definition of "major detailed requirements" and deletion of "business day":</p> <p>"major detailed requirements" means Requirements PW7; PW10; WN1; WN3; WN6WN5; WN8; WN9; WN10; WN11; WN12; WN13; WN14; WN22; WN27; WN29WN19; WN23; WN25; OPSF1; OPSF2; OPSF3[A]; OPSF4; PR1; PR3; PR4[A]; PR6; LC1; LC3; LC4[A]; LC5; OH1; OH3; OH5 and OH8;</p> <p>"Section 106 Agreement" means the section 106 agreement between the undertaker and IACC dated [X] April 2019;</p>	<p>Definition of "business day" has been deleted and replaced with "working day" in article 2.</p> <p>Definition of "major detailed requirements" has been updated to reflect the renumbering and to ensure all detailed design, schemes and landscaping provisions are included.</p> <p>Definition of "Section 106 Agreement" has been amended to refer to the s106 between Horizon and IACC – this is still to be signed as at the date of drafting this summary.</p>