

APPENDIX A – WELSH GOVERNMENT RESPONSE TO SECRETARY OF STATE LETTER (DATED 23 OCTOBER 2019)



Paragraph number	Examining Authority's Question	Welsh Government Response
Ecology Paragraph 4: Representations of the Government of the Republic of Ireland under the Espoo Convention	<p>On 15 February 2019 the Government of the Republic of Ireland responded to notification of the proposed development under the Espoo Convention (Examination Library reference AS-0153). The Secretary of State notes that this response was received during the examination and that many of the matters raised in it have been examined. However, the Secretary of State requests comments on the response from the Applicant and all interested parties, particularly NRW and the Welsh Government.</p>	<p>Welsh Government note the matters raised by the Government of the Republic of Ireland and the acknowledgement from the Secretary of State that many of these matters were discussed during the Examination.</p> <p>Welsh Government did not raise any of these matters during the Examination and do not wish to provide any further comments at this stage as these are matters that are, primarily, for the Secretary of State, as the decision maker of the DCO application, and the Applicant.</p> <p>Natural Resource Wales (NRW) dealt exclusively with habitat regulation matters during the Examination. NRW will be providing a separate response on these matters.</p>
Historic Environment Paragraph 22: Archaeology	<p>The Secretary of State notes that during the examination and following the announcement that Hitachi Limited was withdrawing its funding for the Development, the Applicant ceased all intrusive archaeological work in and around the Development site and stated that it would not adhere to the written scheme of investigation ("WSI") that it had agreed with IACC, Gwynedd Archaeological Planning Service ("GAPS") and Cadw. The Secretary of State also notes that later in the examination, the Applicant stated that it was working to achieve full post-excavation assessment and analysis of the archaeological finds in and around the Development site in accordance with best practice guidance by the end of October 2019.</p> <p>The Secretary of State requests an update from the Applicant on the progress of these works.</p> <p>The Secretary of State also requests a response from Welsh Government ("WG"), IACC, Cadw and GAPS as to whether they are of the view that post excavation archaeological investigations have been or will be completed in a satisfactory manner.</p>	<p>The scale of the fieldwork undertaken at Wylfa Newydd has produced an unprecedented post-excavation assemblage and revealed the presence of nationally significant archaeological remains, dating from the Neolithic through to the early medieval period. Throughout the Examination period, Welsh Government (and Cadw) highlighted significant concerns relating to the completion of post excavation archaeological investigations.</p> <p>There are three key stages to post excavation work, pursuant to archaeological standards under the Written Scheme of Investigation (WSI), agreed with Isle of Anglesey County Council (IACC) and Gwynedd Archaeological Planning Service (GAPS), and the Chartered Institute for Archaeologists (ClfA) Standards and Guidance for Archaeological Investigation:</p> <ul style="list-style-type: none">• Stage 1: Processing - This involves removal of soil from the remains, stabilisation and temporary storage;• Stage 2: Assessment work - This stage assesses the potential of the remains and sets out proposals for the following analysis stage in the form of a report, including a timetable; and• Stage 3 - Analysis, reporting, publication, dissemination and permanent archiving - In accordance with archiving standards. <p>The Environmental Statement (ES) (Application Ref. 6.4.11; PINS Ref. APP-130) sets out that archaeological recording in advance of, or during, construction for physically affected archaeological remains would be undertaken as mitigation to reduce the magnitude of change and significance of residual effect. Archaeological recording, followed by a programme of reporting, analysis, publication, dissemination and archiving would be undertaken to make a permanent record of these remains and/or their settings. The ES concludes that without appropriate archaeological recording, the Project will introduce unmitigated substantial harm on nationally significant archaeological remains.</p>

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		<p>Welsh Government understand, through discussions with the Applicant in November and December 2019, that Stages 1 and 2 (as asset out above) will be completed by April 2020, and that all archaeological finds have been, and will continue to be, stored temporarily at the Horizon Menai Bridge storage facility. Welsh Government has recently been provided with update reports and a contract entered into by the Applicant with Wardell Armstrong for the completion of the post excavation assessment work up to the end of Stage 2. This is welcomed by Welsh Government.</p> <p>In line with representations made during the Examination period, Welsh Government (and Cadw) is keen to ensure that there is also a legally binding commitment from Horizon to complete the full programme of post-excavation works (Stages 1-3 as outlined above). The potential research value and public interest was an important consideration in the justification for undertaking such extensive archaeological investigation.</p> <p>Welsh Government has had recent positive engagement with the Applicant, IACC and GAPS on this matter and the Applicant has made a commitment, in principle, to enter into an agreement for the completion of all remaining post excavation works (i.e. to the end of Stage 3). This commitment is welcomed by Welsh Government. There continue to be matters to be resolved relating to this proposal before a satisfactory contract can be entered into and before this commitment can be relied upon, but Welsh Government welcome progress on this matter and will positively engage with the Applicant to seek to resolve this matter prior to the end of January 2020.</p> <p>The excavation works have clearly been carried out for the purposes of, and as part of, the wider Project. Unless the full programme of post-excavation works is completed, this will represent unmitigated substantial harm on assets of national importance. Such an outcome would be contrary to the environmental assessment undertaken and the mitigation relied on within the ES and by the applicant within its Deadline 3 submission.</p> <p>Any current Requirements in the draft DCO relating to archaeology are not triggered until works relating to the authorised development are carried out, which could be many years in the future, if at all. The Welsh Government will therefore continue to work with the Applicant to seek to secure a satisfactory solution to this matter.</p> <p>Until a satisfactory agreement has been entered into for completion of all post excavation works, Welsh Government must maintain the position put forward at Deadline 7 in response to Action Point 21 [REP7-004], that, in absence of a section 106 or other suitable contractual commitment which takes effect immediately, a suitable mechanism for securing the post-excavation work should be imposed by the Secretary of State within the DCO at the time this is granted through a new Article, namely:</p>

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		<ul style="list-style-type: none"> • A positive obligation in the DCO pursuant to a new article in the DCO requiring the implementation of a defined post excavation scheme to be completed. The drafting should ensure it is enforceable from the date of the DCO (regardless of whether there is commencement pursuant to the DCO); and • The obligation should require provision of adequate funding for the scheme or adequate security for performance, including the ability for IACC to enforce the obligation against the land and recover monies. In this regard, the draft DCO could be amended to replicate the enforcement powers under section 106 of the 1990 Act to the extent necessary in respect of archaeology (Article 80 and paragraph 5 of Schedule 20 already applies and modifies provisions of section 106 of the 1990 Act). <p>Welsh Government is hopeful that a satisfactory contractual arrangement can be entered into prior to the end of January 2020 which will avoid the need for the above amendment to the DCO. Welsh Government will engage positively with the Applicant, IACC and GAPS to seek to achieve this. Welsh Government will provide a further update in January 2020.</p>
Historic Environment Paragraph 23 & 24: Scheduled Monuments	<p>The Secretary of State is aware that a number of archaeological assets of high value or of national importance are located in or around the Development site, and that during the examination WG stated that it is considering scheduling some of these archaeological assets to avoid any substantial harm being caused to them. The Secretary of State understands that at the end of the Examination there were six such sites that were agreed to be of schedulable quality.</p> <p>NPS EN-1 states that heritage assets that have not been designated as a scheduled monument but have yet to be formally assessed for designation or have assessed as capable of being designated but have not yet been designated, must be subject to the same considerations as those that apply to designated heritage sites. NPS EN-1 also states that any harm to, or loss of, designated assets should be “wholly exceptional”. The Secretary of State asks the Applicant to:</p> <p>(A) Confirm the current state of those six sites.</p>	<p>During the Examination, the Examining Authority were notified of three (3) nationally important archaeological sites (please refer to Annex 1 of REP9-029) located within the Wylfa Newydd Development Area (WNDA).</p> <p>Gwynedd Archaeological Planning Service (GAPS) and Cadw have confirmed that the three sites have only been partially excavated by the Applicant. Based on the results of the Archaeological Summary Reports submitted by the Applicant during the Examination (Deadline 8), significant archaeological remains are likely to extend beyond the areas of Excavation.</p>

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Historic Environment Paragraph 23 & 24: Scheduled Monuments (contd...)	(B) Provide details of the features of these sites that make them schedulable quality.	<p>Based on the results of the archaeological excavations reported in the Archaeological Summary Reports (submitted by the Applicant during the Examination - Deadline 8), and subsequently assessed in the Environmental Statement Addendum (submitted by the Applicant during the Examination - Deadline 8), the heritage significance of the archaeological remains identified within the three nationally important archaeological sites is considered to be of schedulable quality, due to their national importance.</p>
Historic Environment Paragraph 23 & 24: Scheduled Monuments (contd...)	(C) Confirm the basis for the assertion that substantial harm to such assets can be avoided by archaeological excavation, reporting, etc. (D) Provide evidence to demonstrate how the harm to or loss of the high value archaeological assets or archaeological assets of national importance in and around the Development site is "wholly exceptional".	<p>The key issue in relation to the existing archaeological excavation works already undertaken remains that if a comprehensive programme of sensitive post-excavation analysis is not carried out in a timely manner, this will represent substantial harm on assets of national importance. Please see the response above in respect of paragraph 22.</p> <p>There is the ability to secure significant public value through a comprehensive programme of sensitive excavation, analysis, recording and dissemination, which would allow a positive contribution as it will reveal the significance of the asset that would otherwise remain unknown, and sterilised from further investigation due to the restrictions that would be secured in association with a nuclear licenced site. In addition to the article requested above in respect of excavation works already undertaken (see response above to paragraph 22 and Welsh Government's D7 submission), Welsh Government has also suggested in our Deadline 9 response [REP9-029] that in line with Paragraphs 5.8.20 and 5.8.21 of NPS EN-1, the Examining Authority may wish to consider the use of DCO requirements, with clearly enforceable triggers, to ensure that the completion of the exercise is properly secured in respect of all archaeological excavation works (including those yet to be undertaken). This is discussed further in Welsh Government's response to paragraph 25 below.</p> <p>The Archaeological Summary Reports that were submitted as part of the Examination confirm the high value and nationally significant importance of some of the archaeological assets that have been excavated. It is known that these significant remains extend beyond the areas of excavation. Consequently, Cadw indicated during the examination that they were considering scheduling some of these remaining areas of the site along with areas which have been subject to intrusive archaeological investigations.</p> <p>Should these areas be designated, this would provide a defined boundary within which the archaeological remains would be legally protected from damage or disturbance. Should the development proceed, then the developer would have to obtain Scheduled Monument Consent from Welsh Government / Cadw to undertake further excavation work. This consent is a devolved matter and would be determined by Cadw on behalf of the Welsh Ministers.</p> <p>However, Cadw has no immediate plans to schedule the sites and would prefer to rely upon protections within the DCO, provided the following are secured:</p>



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		<ol style="list-style-type: none">1) A satisfactory contract with the Applicant in respect of completion of all post excavation works in respect of the excavation already carried out; or, in the absence of this a new article in the DCO to secure this work (see response to para 22 above); and2) Amendment to SPC8 to secure an Archaeological Mitigation Scheme prior to commencement of Work 12 to protect archaeological remains on site from damage (see response below to para 25).
<p>Historic Environment</p> <p>Paragraph 25: Requirement SPC8</p> <p>Archaeological Written Scheme of Investigation</p>	<p>The Secretary of State is aware that during the examination, WG requested an amendment to requirement SPC8 to require an approved Archaeological Mitigation Scheme to be in place prior to work commencing on site clearance and preparation works so that it is in line with the approach proposed for other works during the construction phase. The Secretary of State notes that the wording suggested by the WG was resisted by the Applicant on the basis that an Archaeological Mitigation Scheme, in addition to the Archaeological Written Scheme of Investigation it had agreed with IACC, was not necessary due to the scale and non-intrusive nature of the site clearance and preparation works. The Secretary of State requests comments from both the Applicant and the WG on the following text:</p> <p><i>1) No development shall take place within the WNDA area until the Applicant or their agent or their successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted and approved in writing by IACC, in consultation with Cadw.</i></p> <p><i>2) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (1).</i></p> <p><i>3) Commissioning of Unit 2 shall not take place until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of</i></p>	<p>Welsh Government has positively engaged with the Applicant to explain its concerns and to seek to reach agreement on the necessary protections to be included in the DCO in respect of archaeological remains which are still on site. Welsh Government understands that the original intention was for the site to be cleared of all archaeological remains prior to the carrying out of the site preparation and clearance works under Work 12 (or pursuant an alternative planning permission). This may no longer be the case.</p> <p>During the examination, Welsh Government therefore requested inclusion of a requirement for an Archaeological Mitigation Scheme (AMS) in relation to Work 12, in addition to a Written Scheme of Investigation (WSI). In doing so, Welsh Government noted that there is a clear distinction between a WSI and an AMS (this distinction in terminology is well understood amongst archaeological professionals), as follows:</p> <ul style="list-style-type: none">• WSI: A WSI largely relates to the methodology for archaeological works and investigations and would typically be prepared by an archaeologist for use by an archaeologist;• AMS: In contrast, an AMS focuses on preventing damage to the archaeological areas and would be provided to a contractor. This can be a relatively simple document and so should not be burdensome on the Applicant. Typical requirements of an AMS would be that works will not be undertaken in certain areas (such as the 3 areas of national significance) until archaeological excavations have been completed in respect of such areas pursuant to an agreed WSI and protection measures that will be put in place (such as fencing). <p>An AMS will help ensure the protection of the archaeological sites during the site clearance and preparation works (Work 12) if the archaeological investigations had not been completed by that time. Welsh Government's experience is that there are numerous examples where accidental damage has occurred to archaeological sites during site preparation operations due to the failure of on-site project managers and contractors to recognise that the archaeological sites are present and need to be protected. The AMS as a construction document should help prevent this happening.</p> <p>It is important to note that the archaeological remains (including fragile skeletons) are located near the surface and are not buried deep below ground. Welsh Government does not</p>

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	<p><i>Investigation approved under condition (1) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.</i></p>	<p>therefore accept that the scale and nature of the site clearance and preparation works under Work 12 will not have an impact on the archaeological sites. These works include heavy machinery, soil stripping and hedge removal, any of which could destroy fragile archaeological remains near the surface.</p> <p>Paragraph 5.8.22 of NPS EN-1 sets out that where the Examining Authority considers there to be a high probability that a development site may include undiscovered heritage assets with archaeological interest, the Examining Authority should “<i>consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction</i>”.</p> <p>It is noted that the Deadline 10 version of the DCO includes the following DCO requirements:</p> <ul style="list-style-type: none"> • SPC8 prevents Work 12 (site preparation and clearance works) from commencing until a “<i>written scheme of investigation</i>” has been approved by IACC. Cadw is named as a consultee. There is currently no requirement for an AMS in respect of Work 12; and • WN1(3)(a) prevents any of the Power Station Works, Marine Works or Site Campus until a “<i>WNDA Archaeological Mitigation Scheme</i>” (including a “<i>written scheme of investigation</i>”) has been approved by IACC. <p>Part 2 of Schedule 4 sets out what the “<i>WNDA Archaeological Mitigation Scheme</i>” must address and Cadw is named as a consultee. There is consequently a significant difference in approach in respect of the requirements for archaeology protections which apply to Work 12 compared to the wider project.</p> <p>Following engagement with the Applicant, it is understood that the Applicant intends to request a revision to SPC8 to include a requirement for an AMS in respect of Work 12. Welsh Government welcomes this. Welsh Government will liaise with the Applicant, IACC and GAPS to consider and seek to agree the detailed wording of this. It is important that the revised requirements include a requirement for the WSI and AMS to be implemented as approved as the WSI may contain obligations which go beyond the period of Work 12 (such as post excavation analysis, publication and archiving).</p> <p>Welsh Government wish to make clear that the proposed amendment to requirement SPC 8 only relates to future excavation works associated with the three sites identified as containing nationally important archaeology. Post-excavation analysis associated with excavation works already carried out at the Wylfa Newydd site is discussed in response to Paragraph 22 above.</p>

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Traffic and Transport Paragraph 29: Dalar Hir	<p>The Secretary of State notes that at the end of the examination, WG raised concerns regarding the modelling of the capacity of Junction 4 at Dalar Hir and asked for confirmation as to whether the modelling was based on 1,900 daily vehicle movements or 1,000 daily vehicle movements.</p> <p>The Secretary of State requests the Applicant to confirm the figure used for modelling daily vehicle requirements, and for its views on WG's proposed amendment to Requirement PR5 Site Access Design.</p>	<p>As part of Welsh Government's Deadline 9 submission [REP9-029], Welsh Government asked Horizon to confirm whether the junction capacity modelling at Dalar Hir (junction 4 of the A55) was based on 1,900 daily vehicle movements or 1,000 daily vehicle movements.</p> <p>Horizon has recently confirmed that the modelling is based on 939 daily vehicle movements. The modelling then also looked at the additional impacts of shift workers who live at the Site Campus and leave on Thursday evenings and return on Sunday evenings. The modelling assumed that 50% of shift workers would leave the Site Campus in this way each weekend.</p> <p>Previously in the examination, Welsh Government had been seeking an amendment to the DCO requirements to limit the number of daily parking spaces to reflect the modelling undertaken. However, Welsh Government is content with the proposal for a Parking Phasing Scheme to be submitted and approved pursuant to DCO Requirement PW7 to provide some flexibility, provided Welsh Government is named as a consultee in respect of such scheme view of its role as strategic highway authority. Any such Parking Phasing Scheme will necessarily be informed by and need to be consistent with the modelling undertaken.</p> <p>It is understood that the Applicant agrees to this and intends to request an amendment to Schedule 4 of the draft DCO to specifically identify the Welsh Ministers as a consultee to the Parking Phasing Scheme in column (3) of Part 1 of Schedule 4. Welsh Government also requests this amendment is made.</p>
Traffic and Transport Paragraph 30: Abnormal Indivisible Loads	<p>The Secretary of State notes that during the examination, the Applicant confirmed that no Abnormal Indivisible Loads ("AIL") would be required in relation to works no 12, and that WG requested that for the avoidance of doubt this should be secured through amendment of the CoCP. The Secretary of State requests confirmation from the Applicant and WG that the CoCP has been amended to address this issue or explain why this is not appropriate or cannot be agreed.</p>	<p>Welsh Government note that the Wylfa Newydd Code of Construction Practice (CoCP) submitted at Deadline 10 [REP10-018] has not been amended to prohibit the use of Abnormal Indivisible Loads (AILs) in relation to Work No.12 (Site Preparation and Clearance Works).</p> <p>In line with Welsh Government's Deadline 9 submission [REP9-029], Welsh Government request that, for the avoidance of doubt, a requirement is attached to the Development Consent Order (DCO) that prevents any AIL movements during Work No.12. It is understood that the Applicant does not object to this. The following wording is submitted for consideration by the Secretary of State:</p> <p><i>No vehicles carrying abnormal Indivisible loads shall be used in relation to Work No.12 unless otherwise approved with IACC, in consultation with Welsh Government.</i></p>
Tourist Accommodation and Construction Paragraph 31 & 32	<p>The Secretary of State is aware that concerns were raised by the WG regarding the impact of demand in housing during the construction phase, particularly on tourist accommodation. To address this concern, WG suggested the insertion of the following requirement</p>	<p>There was extensive engagement by Welsh Government with the Applicant and IACC in relation to housing and tourist matters. The mitigation measures contained within the section 106 agreement reflects the final position as at the close of the examination and Welsh Government do not wish to pursue a specific cap on tourism accommodation.</p> <p>Welsh Government are not clear on when this request was made to the Examining Authority but wish to make clear that the suggested requirement is no longer required.</p>

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	<p><i>The number of construction workers occupying accommodation in the Tourist Sector shall at no time exceed 1100.</i></p> <p>The Secretary of State invites comments from the Applicant for views on the cap of the use of tourist accommodation by construction workers, and for details on how the Applicant intends to monitor and enforce the use of tourist accommodation by its staff and subcontractors.</p>	
<p>Welsh Planning Policy & Climate Emergency Declaration</p> <p>Paragraph 36</p>	<p>The Secretary of State is aware that following the examination, WG published its draft National Development Framework for consultation on 7 August 2019 with responses due by 1 November 2019. The Secretary of State is also aware that after the close of the examination, WG made a climate emergency declaration on 29 April 2019 committing the WG to help other areas of the economy to make a decisive shift away from fossil fuels and reinforced support for the policies and proposals contained within Prosperity for all: A Low Carbon Wales (2019). The Secretary of State invites comments from any Interested Party in regard to the Development and WG's draft National Development Framework and climate emergency declaration.</p>	<p>As highlighted within Welsh Government's examination responses (Response to Q17.0.6, REP2-366, Paragraph 2.1.3 of the Written Representation, REP2-367), and in the Statement of Common Ground with Horizon (WG06 of REP8-017), the Wylfa Newydd DCO will be determined pursuant to s105 of the PA208, where planning policy documents will be considered as "<i>important and relevant considerations</i>" and will be afforded significant weight when assessing and determining the application. The draft National Development Framework (NDF) should be considered in the determination of the application.</p> <p>Policy 22 of the draft NDF recognises that North West Wales offers an opportunity for new energy development and investment. This policy highlighted how new energy-related development can support the communities of this area, provide jobs and investment in training and skills, and maximise investment into the wider region.</p> <p>This position in the draft NDF reiterates the position of Welsh Government throughout the Examination of the Wylfa Newydd DCO, as set out in their Written Representation [REP2-367, paragraph 1.1.2]: <i>Welsh Government has stated that in principle it is supportive of a new nuclear facility at Wyldfa in the context of energy security, contribution towards meeting our decarbonisation agenda, and the potential social and economic opportunities that could be provided over its lifetime for future generations.</i></p> <p>However, the key part of this support, in principle, is that it is conditional on all the potential impacts in relation to key areas of interest to the Welsh Government being sufficiently mitigated.</p> <p>This is reiterated in the Welsh Government's low carbon delivery plan, 'Prosperity for All: A Low Carbon Wales', published March 2019, just before the climate emergency declaration made on 29 April 2019. Policy 34 of the delivery plan seeks to maximise Welsh benefit from major infrastructure projects in Wales. Direct reference is made to Welsh Government's commitment and involvement to process for Wylfa Newydd, and (similar to the draft NDF) sets out the recognition that there is a major legacy of benefits to Wales through the delivery of Wylfa Newydd.</p>

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Marine Enforcement Authority Paragraph 38	<p>The Secretary of State is aware that the WG is of the view that Welsh Ministers are the enforcing authority in respect of requirements relating to Marine Works below the mean low water mark. The Secretary of State is also aware that a new Article, Article 86, was inserted to make clear that Welsh Ministers are the enforcement authority for land below the mean low water mark. The Secretary of State requests confirmation from the WG and IACC whether they are content with the drafting below:</p> <p><i>For the purposes of section 173 of the 2008 Act, the Welsh Ministers will be the relevant planning authority in respect of land seaward of the mean low water springs.</i></p>	<p>Welsh Ministers are able to confirm they are content to be the enforcing authority in respect of DCO requirements in relation to land seaward of low mean water springs ("LMWS") as agreed during the examination. Welsh Ministers are the enforcing authority in respect of marine licence conditions and so also have marine expertise to perform the function.</p> <p>The principle of article 86 is therefore agreed and Welsh Ministers are content to be the relevant "local planning authority" for the purposes of section 173 and Part 8 of the Planning Act 2008 in respect of land seaward of mean low water springs.</p> <p>Insofar as the drafting of the DCO is concerned, this needs to ensure Welsh Ministers shall have all relevant powers of enforcement under Part 8 in respect of any offence in respect of land seaward of low mean water springs (including power of prosecution under s.161) and that Part 8 PA 2008 shall apply in respect of land seaward of LMWS. In this regard, it appears the DCO would benefit from the following clarifications:</p> <ul style="list-style-type: none"> • It appears "mean low water springs" requires definition in the DCO. MHWS is currently defined in the draft DCO but not MLWS; • the definition of "land" (both in the DCO and for the purposes of Part 8 of the PA 2008) may require amendment to expressly include the land seawards of the mean low water springs; • Welsh Ministers shall be the relevant local authority for the purposes of both section 173 "and Part 8" of the Planning Act 2008; and • Welsh Ministers shall have all relevant powers of enforcement under Part 8 in respect of any offence in respect of land seaward of low mean water springs (including power of prosecution under s.161) and Part 8 PA 2008 shall apply in respect of land seaward of LMWS. <p>Welsh Government will continue to engage with the Applicant and IACC over the wording of article 86.</p>