

HORIZON

NUCLEAR POWER



Wylfa Newydd Project

Post Oral Hearing Summaries - Wednesday 9th January

PINS Reference Number: EN010007

17 January 2019

Revision 1.0

Examination Deadline 4

Planning Act 2008

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

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

The Second Issue Specific Hearing on the draft Development Consent Order held on 9th January 2019.

Introduction

1. This note summarises key submissions made by the parties, and actions emerging for Horizon, from the Second Issue Specific Hearing on the draft Development Consent Order held on 9 January 2019. The items refer to the final agenda prepared by the Examining Authority (ExA) on 19th December 2018 (the "Agenda").
2. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority on 19 December 2019 (the "Agenda"). In setting out Horizon's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda.
3. In addition to covering the agenda items as noted above, this note also relates to the ExA's list of action points arising from the hearing
4. A CV for each of the witnesses who made oral submissions on behalf of Horizon is appended to this document.

Agenda Item/Issue	Summary of Oral Submission	Relevant Doc References
Item 2 – Purpose of the ISH		
2(a) To review the Applicant's changes to the draft DCO (dDCO) from Revision 1 to Revision 3 and submissions from IPs	Definition of "commence" – article 2 With respect to the concerns raised by North Wales Police ("NWP") and Isle of Anglesey County Council ("IACC") regarding the definition of "commence" being too widely drawn, Michael Humphries QC, Counsel for Horizon , noted that this is a standard definition within DCOs and was included to enable minor site establishment works to be undertaken prior to commencement main	<ul style="list-style-type: none"> • Summary Tables of DCO amendments Deadline 1 [REP1-009] and Deadline 2 [REP2-004]

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<p>on any proposed changes</p> <p>Key changes to the articles at D1 and D2</p>	<p>construction. This definition enables Horizon to undertake works under the planning permission for Site Preparation and Clearance (once granted) without being held to have commenced works under the DCO. In response to concerns regarding the inconsistency created by this definition and commencement of Work No.12 under the SPC Requirements, Counsel for Horizon confirmed that Horizon would amend the definition at Deadline 5 (12 February 2019) to make it clear that it excludes Work No.12.</p> <p>In response to IACC's concerns about the inclusion of clause (j) (being the "erection of temporary buildings, structures or enclosures related to any of the works listed above") for greenfield sites, Counsel for Horizon noted that the purpose of the exclusion was to allow contractors to do small establishment works on site (which was standard construction practice). In addition, clause (j) was, in any event, constrained by "any of the works listed above" which means that temporary structures or building can only be erected only for a site establishment purpose – not general construction. For these reasons, Horizon considers that it is appropriate for these activities to remain within the exclusions in the definition.</p> <p>Definition of "discharging authority" – article 2</p> <p>In respect of the identification of Natural Resources Wales ("NRW") as the discharging authority below MHWS, Counsel for Horizon noted that NRW had been suggested as the discharging on the basis that the Marine Licence applied up to the MHWS and to ensure there is alignment between NRW and IACC on the identified inter-tidal area to avoid a scenario where two discharging authorities impose conflicting requirements. The ExA directed NRW, IACC and the Welsh Government to consider the issue and prepare proposed drafting to address this overlap for submission to the Examination.</p> <p>While noting it was content to be identified as a discharging authority in respect of the marine area, NRW noted that it must be able to recover the costs incurred</p>	<ul style="list-style-type: none"> ● Revision 3.0 of the DCO (Track against Deadline 1) [REP2-022] ● Explanatory Memorandum at [3.4] [REP2-023] ● Horizon response to IACC concerns at Section 4 - 9 and 8 of WR response [REP3-019] which addresses a number of points in relation to the draft DCO.

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	<p>in discharging applications. In response, Counsel for Horizon made the following points:</p> <ul style="list-style-type: none"> • There is only one set of works in the marine area and those will be subject to a marine licence. As the licensing authority, NRW will be entitled to recover its cost for doing so under the Marine Licensing (Fees) (Wales) Regulations 2017. While those same works appear in the Draft DCO (and will be addressed through Requirements), it is intended that the DCO requirements will replicate the marine licence conditions and so discharge would be done in exactly the same way. • Schedule 19 (Procedure for approvals, consents and appeals) sets out the fee schedule for fees associated with discharging requirements and is based on the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017. This is a standard approach adopted in a number of other granted DCOs. • Horizon would be willing to discuss what additional work may be required of NRW in addition to granting the marine licence, and discuss how NRW may be recompensed in an appropriate way be that through Schedule 19 or some other mechanism. <p>Definition of "maintain" – article 2</p> <p>IACC queried the breadth of the definition of "maintain" (in particular, the inclusion at Deadline 1 of "extend, enlarge"), which the ExA noted was a concern shared by other Interested Parties. In response, Counsel for Horizon noted that the definition of "maintain" was developed in accordance with PINS' Advice Note 15 and limited in the following ways:</p> <ul style="list-style-type: none"> • Reference within the definition that maintenance works must not result in any "materially new or materially different environmental effects to those identified in the Environmental Assessment"; and 	

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	<ul style="list-style-type: none"> The parameters set out in Schedule 3 of the Draft DCO which place restriction on the scope of maintenance works that can be undertaken. <p>By way of example, Counsel for Horizon noted that if Horizon needed to extend or enlarge a bus terminal canopy at Dalar Hir (to accommodate, say, higher buses) it could only do so within the parameters set out in Schedule 3 of the Draft DCO – that is, it could extend it from its original 4 metres (as shown on approved plans) up to its maximum height of 5 metres within the Schedule 3 parameters. These types of works, which fall within the parameters and do not give rise to new effects, should be able to be undertaken by Horizon without having to seek changes to the DCO.</p> <p>In response to a query from the ExA as to how such an example fits within the context of the definition of "completion", Counsel for Horizon noted that the definition of "maintain" would provide for such work preventing it from falling into the ambit of the Town and Country Planning Act 1990 and requiring subsequent planning approvals.</p> <p>Counsel for Horizon highlighted the importance of the definition of "maintenance" to an NSIP promoter because section 31 of the Planning Act 2008 requires a DCO for any NSIP and any development that forms part of an NSIP. Where such maintenance work is considered "development that is part of an NSIP" there is real concern it would need its own DCO. The position is slightly different with respect to associated developments; however, for the Wylfa Newydd DCO Project, maintenance of associated development would only be for the period of their temporary use (i.e. 7 to 8 years).</p> <p>Timeframes for approvals under the articles (articles 11, 12, 16 etc)</p> <p>In response to a query from the ExA regarding the need for the word "consecutive" before the reference to days in Articles 11, 12 and 16 etc., Counsel for Horizon noted that statutory drafting doesn't normally require this. The phase</p>	

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	<p>starts with "starting with the date..." so there is no reasonable doubt about the stated timeframes being consecutive.</p> <p>Article 11 – Power to alter layout of streets</p> <p>In response to concerns by NWP that the powers to undertake works outside the Order Limits was too wide, Counsel for Horizon noted that these works are required for minor works such as to tie the A5025 Off-Line Highway Improvements into the existing highway and A5025 On-Line Highway Improvements and that powers have been curtailed through the requirement for Horizon to obtain consent from the street authority under article 11(4).</p> <p>Article 10 – statutory nuisance</p> <p>IACC and the Welsh Government both raised concerns about the scope of Article 10 (statutory nuisance defence), in particular its reliance on control documents which were considered inadequate. In response, Counsel for Horizon made the following points:</p> <ul style="list-style-type: none"> • Section 158 of the Planning Act 2008 that confers this statutory authority for a development and provides the defence to statutory nuisance, unless "any contrary provision made in any particular case by an order granting development consent. • Article 10 limits the defence to where Horizon is acting in accordance with a notice served under sections 60 or 61 of the Control of Pollution Act 1974, or where Horizon is complying with measures within the Codes of Construction Practice or an Environmental Permit. • Horizon set out this response to IACC's concerns at p.17-19 of Horizon's Response to Written Representation - Isle of Anglesey County Council [REP3-019]. 	

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	<p>Article 50 – subsidiary works</p> <p>The ExA queries the removal of article 50 "subsidiary works" and sought confirmation that the works now included in Schedule 1 were still subject to the necessary controls and requirements. Counsel for Horizon noted that in deleting article 50, new elements had been included into the "associated development" of schedule 1 to ensure an appropriate read across and that those elements are subject to the same requirements as before. The additions that were included in Schedule 1 to ensure all works under article 50 were captured is set out in the Summary table of amendments to the Draft DCO (Revision 3.0) [REP2-004].</p> <p>Powers to control the harbour – Part 6</p> <p>The ExA queried the how harbour exclusion zone would be enforced in practice. In response, Counsel for Horizon noted that Part 6 of the Draft DCO deals with Marine Works and, amongst other things, establishes Horizon as the harbour authority (article 45), sets limits of the harbour (article 48) and imports provisions of the Pilotage Act 1987 and Harbours, Docks and Piers Clauses Act 1847 (articles 43 and 47). Horizon also has powers to issue general and specific directions to vessels to control movements within the harbour (articles 62 and 64). The powers to impose a harbour exclusion zone is therefore not unusual.</p> <p>In response to a query from the ExA, Sarah Price, on behalf of Horizon, confirmed that Horizon is scheduled to meet with NWP on 24 January 2019 to discuss security arrangements and measures at MOLF and that this was noted in the draft Statement of Common Ground between Horizon and NWP [REP2-053].</p> <p>Article 74 – Operational land</p> <p>With respect to comments by IACC on article 74 (operational land for the purposes of the 1990 Act) and the definition of "operational land", Counsel for Horizon made the following points:</p>	

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	<ul style="list-style-type: none"> • Electricity and harbour undertakers have been granted permitted development rights by Parliament under the Town and Country Planning General Permitted Development order 1995/418. • There is no reason why Horizon should be not be in the same position as any other statutory undertakers that has been granted a specific planning permission but still has the benefit of the permitted development rights for operational land under section 264 of the Town and Country Planning Act 1990. • Further, any future permitted development rights would be subject to the usual restrictions, that is any works which fell within the definition of "EIA development" under the 2009 EIA Regulations (and therefore require an EIA) would not eligible as permitted development rights. <p>Article 79 and Schedule 19 – procedure in relation to certain approvals</p> <p>In response to comments from IACC and the Welsh Government regarding the inclusion of deemed approvals, the identified appeal body, and the inadequacy of fees and timeframes associated with discharging approvals under Schedule 19, Counsel for Horizon made the following points:</p> <ul style="list-style-type: none"> • Deemed approvals: Horizon has agreed to replace the deemed approval provisions within Schedule 19 with a right of appeal where this is no determination. This amendment will be included in the updated draft DCO to be submitted at Deadline 5 (12 February 2019). • Timeframes: • The time limits in Schedule 19 provide the discharging authority with 5 weeks to determine an application for a "minor detailed requirement" and 8 weeks for "major detailed requirement". 	

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	<ul style="list-style-type: none"> • These timeframes are consistent with PINS Advice Note 15, Appendix 1 which provides a 6 week timeframe for all applications and are identical to the timeframes approved by the Secretary of State in the Hinkley Nuclear DCO. • Fees: <ul style="list-style-type: none"> - Schedule 19 (Procedure for approvals, consents and appeals) sets out the fee schedule for fees associated with discharging requirements and is based on the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017. This is a standard approach adopted in a number of other granted DCOs and is considered appropriate. - In addition, Horizon has committed substantial support to IACC under the Draft DCO s.106 in terms of resourcing including a service level agreement and contributions towards monitoring and staffing requirements. • Appeal body: Horizon appreciates the engagement from the Welsh Government on the matter of the appropriate appeal authority. Horizon's position is to ensure that it respects the devolution settlement while noting that nuclear matters are reserved matters. Ultimately, Horizon is content to leave this matter to the Secretary of State to decide. 	
<p>2(a): Key changes to Schedule 1 at D1 and D2</p>	<p>In response to queries from the ExA regarding the changes to Work No.12 at Deadline 2 (4th December 2018), Counsel for Horizon, Michael Humphries QC made the following points:</p> <ul style="list-style-type: none"> • The removal of diversion works from Work No.12 at Deadline 2 (4th December 2018) was intended to address concerns by Interested Parties and to ensure the alignment between Work No.12 and the works under the site preparation permission. 	<ul style="list-style-type: none"> • Summary Tables of DCO amendments Deadline 2 [REP2-004] • Revision 3.0 of the DCO (Track against Deadline 1) [REP2-022]

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	<ul style="list-style-type: none"> The intention was to have the two mirror each other so that if Horizon was granted the site preparation permission in advance of a DCO grant, it could start those works early and then if the DCO was granted Horizon could serve notice under article 5 and then start undertaking SPC works under Work No 12. An alternative option would have been to create a new, separate work package for the diversion works, as currently the diversion works are not located in any work area other than Work No.12. However, this was considered a little heavy handed for these minor, and isolated works. Therefore, the approach that was taken was to include this work within "other associated development" in Schedule 1 of the Draft DCO. In response to concerns raised by Interested Parties that it was not appropriate for the diversion works to be included within "other associated development", Horizon would reconsider the appropriate mechanism for including these works within Schedule 1 of the Draft DCO. <p>In respect of the Welsh Government's call-in of the site preparation permission, Counsel for Horizon also noted that this meant that it was increasingly unlikely that the site preparation permission would be granted before the DCO and so the need for the switching under article 5 (Effect of the Order on the site preparation permission) was becoming less relevant.</p>	
Item 3 - Articles and Schedules of the draft DCO (Excluding Schedules 3, 4 and 15)		
Item 3(c) - Schedule 1, Other Associated Development		
3(c) To consider in detail Schedule 1, Other Associated Development with particular reference to	<p>Scope of "other associated development" and the catch-all in (p)</p> <p>The ExA queried the definition of "other associated development" and whether this remained a concern, particularly paragraph (o) (referred to as (p) in the Deadline 2 (4 December 2018) update to the Draft DCO). IACC, the Welsh Government and NWP all raised concerns about the breadth of the definition</p>	<ul style="list-style-type: none"> HNP response to NRW WR at [2.1.5 – 2.1.8] [REP3-035]

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<p>Item p of REP2-020 (Rev 3.0). This was previously referred to as Item o in REP1-005 (Rev 2.0); [APP-029] and [APP-030].</p>	<p>and the phrase "other such works as needed or expedient..." In response, Counsel for Horizon made the following points:</p> <ul style="list-style-type: none"> • Intention of including "other associated development" was to avoid repetition of a long list of minor works within each of the numbered work packages in Schedule 1 of the Draft DCO. Without the "other associated development" section, Horizon would be required to outline all works under each work package which would result in a significant amount of detail having to be included within Schedule 1. • The definition of "other associated development" includes a number of protections which were common to most DCOs. For example, is clear on the drafting that all other associated development must be in connection with other Work Nos. and in connection with construction, operation, maintenance of those works. The inclusion of "other associated development" did not give Horizon carte blanche to do whatever it chose. • The works identified in paragraphs (a) to (o) have been informed by Horizon and seeks to capture all works likely to be required; however, it is conceivable for a project of this size that all works will have been identified, which is why paragraph (p) has been included. • While paragraph (p) includes broad terms, it is constrained by the fact that any works pursuant to this clause cannot result in "any materially new or materially different environmental effects from those assessed as set out in the Environmental Statement". Further, the works cannot go beyond the Order Limits. • The qualifier in (p) that there can be no materially different environmental effects requires ordinary planning judgement that is typical of the role of local authorities. If Horizon erred and undertook a work that resulted in a materially different environmental effects, then Horizon would be in breach of the DCO and at risk of committing a criminal offence. Horizon would therefore be very 	<ul style="list-style-type: none"> • HNP response to IACC WR at section 9 [REP3-019] • Appendix 3, D2 Cover Letter [REP2-374]

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	<p>careful to ensure that any works under (p) remained within the scope of the Environmental Statement.</p> <ul style="list-style-type: none"> Although a number of Interested Parties have sought for the deletion of (p), its deletion would pose a significant risk to the Wylfa Newydd DCO Project and for this reason it is strongly opposed by Horizon.. Horizon is, however, happy to consider further amendments to (p) to make it clear that, for example, this catch-all would not apply to the temporary associated developments after they had been decommissioned (i.e. at Dalar Hir for example). <p>In response to IACC's comments about the phase "necessary or expedient", Counsel for the Applicant noted that:</p> <ul style="list-style-type: none"> It must be recognised that Schedule 1, Schedule 3 and the articles have different functions. Schedule 1 simply describes the works; whereas all works (including the associated developments) are controlled by the articles and the requirements in Schedule 3. Any works that are undertaken pursuant to (p) will be controlled by the full suite of Requirements in Schedule 3. <p>Community awareness of "other associated development"</p> <p>In response to comments from the ExA about how the community would be advised of the works undertaken pursuant to (p), Counsel for Horizon advised that:</p> <ul style="list-style-type: none"> There would be limited circumstances where Horizon would seek to undertake works in accordance with (p) as all known works have been identified already through (a) to (o). The purpose therefore of (p) is to provide a catchall and to ensure that Horizon does not need to seek changes to the DCO or other consents to undertake works that had not been identified in (a) to (o) but that were still of a minor nature. 	

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	<ul style="list-style-type: none"> The Codes of Construction Practices include a range of measures to ensure and provide for the provision of information to the community in respect of works being undertaken. It includes a Community Liaison Group, the provision of communications and information regarding the construction phase via the Project website, and the provision of Community Involvement Offices under the Draft DCO s.106. 	
Item 4 - Schedule 3 - Requirements of the draft DCO		
<p>4(a) To identify areas where there are still differences of opinion and whether additional work, mitigation or changes to the development consent order are proposed or required</p>	<p>The ExA and key stakeholders including IACC, the Welsh Government, Gwynedd Council ("GC"), NRW and NWP raised concerns about the lack of detail within the suite of control documents. In response, Counsel for Horizon, Michael Humphries QC, made the following comments:</p> <ul style="list-style-type: none"> There is no practical difference between whether a matter is secured under a Requirement in Schedule 3 or through a control document that is certified in accordance with article 76. The approach that Horizon has taken to drafting the Requirements is to seek to secure the majority of controls within control documents (such as the Wylfa Newydd CoCP) in order to reduce the number of requirements as well as ensure that all controls are located in one document for ease. Locating controls within certified document is a standard approach within DCOs and for this reason Horizon disagrees that controls must be secured by a Requirement as sought by the Interested Parties. The issue, therefore, is focused on the detail in the control documents, rather than whether controls should be secured through a Requirement rather than a control document. While Horizon acknowledges concerns about the detail within the control documents; however, it is important to note that as the Wylfa Newydd DCO Project is still within the initial design stages, the control documents seek to 	

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	<p>control outcomes rather than provide specific details on all the methodologies to be implemented. However, Horizon will continue to work with Interested Parties to review the contents of the control documents to resolve their concerns.</p> <ul style="list-style-type: none"> • Certain Requirements also require Horizon to provide details at a later stage for approval by IACC. <p>In response to comments from Interested Parties that Horizon should either provide greater detail in the control documents or in specific requirements; or that all control documents should be subject to post-grant approvals, Counsel for Horizon made the following points:</p> <ul style="list-style-type: none"> • The answer is not simply one of trying to produce vast numbers of Requirements to replicate or duplicate measures set out in the control documents. Those matters are already adequately secured. • There is a limit to the detail or information that can be provided given the state the Wylfa Newydd DCO Project is currently at; for this reason, it is important to focus on those activities that are known and their effects. • The focus of control documents must therefore be the intended deliverable outcomes rather than on the specifics of how that outcome is reached. • It is intended that for each site both the Wylfa Newydd CoCP and the relevant sub-CoCP will apply. Therefore, while the sub-CoCPs may be smaller in nature, this is because the controls are already secured within the Wylfa Newydd CoCP and so both documents need to be read together to understand the controls that apply to the particular site. • Horizon has not sought to duplicate controls in statutory guidance or under other consents (such as mitigation licences or environmental permits) – the CoCPs simply state that Horizon must comply with the methodologies or controls within the documents. The reason for this that those other documents sufficiently control construction activities and if they were duplicated within the 	

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	<p>CoCPs there could be a future inconsistency if the statutory guidance or other permission was amended (which Horizon would have to remedy through the use of the tailpiece provisions and subsequent approvals).</p> <ul style="list-style-type: none"> • While Horizon does not accept that the control documents are not sufficiently detailed, it will continue to work with the Interested Parties to understand the detail that is sought with a view to submitting updated control documents at Deadline 5 (12 February 2019). • In order to ensure the control documents can provide the level of detail sought, Interested Parties should explain their concerns and provide clear suggestions as to where further detail is required and what that detail should be. • Horizon's preference is for all control documents to be approved through the DCO process as post-grant approvals will have implications in terms of delay to the Wylfa Newydd DCO Project and the uncertainty of not knowing what will be approved by the discharging authority. 	
4(a)- Differences of opinion	<p>In response to queries and concerns raised by Interested Parties on various Requirements, Counsel for Horizon, Michael Humphries QC, made the following points:</p> <ul style="list-style-type: none"> • Submission of Plans for approval: <ul style="list-style-type: none"> - Regarding IACC's criticism that Horizon had amended the Requirements to remove the need to obtain approvals prior to commencing works, this was not the intention of the amendments made at Deadline 2 (4 December 2018). - The intention of the amendment was to ensure that the requirement could not be read as fettering IACC's discretion to approve or not approve the plan. 	

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	<ul style="list-style-type: none"> - The Requirements are still clear that Horizon must undertake works in accordance with an approved plan and so Horizon will require these approvals before it can commence works. - Horizon will, however, reinstate the original wording in the Draft DCO at Deadline 5 (12 February 2019). • Triggers in respect of key mitigation: Regarding GC's and the Welsh Government's comments about Requirement PW2 and the need for clear triggers, Horizon will submit a revised Phasing Strategy at Deadline 4 (17 January 2019) and will include clearer trigger points for each key mitigation. • PW3 Construction Method Statement: In respect of Requirement PW3, Horizon prefers the drafting proposed in Requirement PW3(2) (i.e. does not give rise to materially new or different effects) as it is more appropriate than trying to tie Horizon to specific equipment or methodology used in the Environmental Statement assessment (which would be problematic given the long construction period). The proposed wording provides Horizon with some flexibility to accommodate alternative methodologies or equipment (which for example could be more efficient or an environmentally better option) which although not specifically assessed in the Environmental Statement do not give rise to materially new or different effects. • Restriction on Site Campus size and use of Land and Lakes' site: <ul style="list-style-type: none"> - With respect to Land and Lakes' request for a restrictive requirement on the size and scope of the Site Campus and the inclusion of its site, the change that is sought by Land and Lakes is a fundamental change to the DCO application. - While changes can indeed be made to a DCO application, where a change is so large that it has not been consulted on or environmentally assessed, it cannot be accepted into Examination. 	

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	<ul style="list-style-type: none"> - This is particularly the case in this scenario, as the Environmental Statement has assessed 4,000 workers on site, and so to restrict numbers to 500 on site with the remainder of the workforce (8,500) residing in the community is not consistent with the assessment, or consultation, that has been undertaken to date. - In addition, when making a decision on the DCO application, the Secretary of State would not know that Land and Lakes (or any other site – for example, unapproved schemes at Rhosgoch) was available because Horizon would not have a commercial agreement and the development may never occur. - The Secretary of State would also face a situation where the effects of 8,500 workers residing in the community (rather than 3,000) had not been assessed within the Environmental Statement. - It is not possible to see how Land and Lakes' proposal is reasonably or legally acceptable. • Approval Rights: <ul style="list-style-type: none"> - In response to NWP's request for approval rights in respect of the Code of Conduct (Requirement PW8), Horizon does not consider that this is necessary because the Code of Conduct must be in accordance with the Workforce Management Strategy. - It is the WMS that provides the detail and controls around workforce behaviour, and so the focus should be on the principles contained within that document and provide comments through the Examination process. - With respect to the Community Safety Management Strategy ("CSMS") (Requirement PW11), this document is to be approved by IACC, who can consult with NWP if appropriate. 	

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	<ul style="list-style-type: none"> - In addition, under the Wylfa Newydd CoCP, NWP is a member of the Emergency Services Sub-Group which will have the role of agreeing a detailed CSMS prior to submission to IACC in accordance with Requirement PW11. 	
Item 5 - Schedule 4 - Deemed Approval or Compliance		
<p>5(a) To identify areas where there are still differences of opinion and whether additional work, mitigation or changes to the development consent order are proposed or required.</p>	<p>In response to the comments made by IACC about the proposed "deemed approval" process under article 5 and Schedule 4, Counsel for Horizon, Michael Humphries QC, made the following comments:</p> <ul style="list-style-type: none"> • The purpose of Schedule 4 was to enable Horizon to undertake SPC works early because those works are very important in construction programme terms. Article 5 therefore, replicates the approach taken in Hinkley Point C (which faced a similar situation). • At the time of drafting, it was contemplated that Horizon would have the final conditions of the site preparation permission and that these could therefore be replicated within the Requirements for Work No.12 under the Draft DCO. This would allow that where certain conditions were discharged under the site preparation permission, they could be considered discharged under the DCO. • However, as the practical effect of the call-in is that the permission will be subject to an inquiry, Horizon has no certainty over what the final conditions (if granted) will be. As a result, the drafting of Schedule 4 becomes extremely problematic as Horizon is unable to properly replicate the conditions within the Draft DCO. • Horizon and other parties have made representations to the Welsh Government about rescinding the call-in; however, if it is not rescinded, Horizon will need to consider very hard whether to pursue the site preparation permission at all and just seek to consent SPC works through the DCO process. 	<ul style="list-style-type: none"> • DCO Amendment Summary Table D2 [REP2-004] • Explanatory Memorandum (Revision 4.0) at Appendix 1 [REP2-023] • HNP response to IACC WR at p.15-17 [REP3-019]

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	<ul style="list-style-type: none"> • While Horizon could make amendments to the preamble to Schedule 4 to capture the explanation of how the transition from the site preparation permission and DCO would work in practice provided (as is currently set out in Appendix 1 into the Explanatory Memorandum [REP2-023] such amendment may no longer be necessary in light of the call-in application. <p>In relation to amendments sought by Interested Parties to article 5, Horizon confirmed that it had amended article 5 at Deadline 2 (4 December 2018) to ensure pre-existing breaches of the SPC site preparation permission were still enforceable following switch to SPC Works under the Draft DCO.</p>	

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Item 6 - Schedule 15 - Protective Provisions of the Draft DCO		
<p>6(a) To receive an update on progress between parties; an explanation of any important differences of view; and timescales for completion.</p>	<p>In relation to the progress of protective provisions, Counsel for Horizon, Michael Humphries QC, acknowledged that there was still a substantial amount of work to be undertaken, but that Horizon considers that the parties can reach agreement and agree protective provisions by the end of Examination.</p> <p>In respect of each statutory undertaker, Counsel for Horizon provided the Inspectors with the following updates:</p> <ul style="list-style-type: none"> • Magnox: Protective Provisions have been agreed and will be included in the updated Draft DCO to be submitted at Deadline 5 (12 February 2019). • Welsh Water: Protective Provisions have been reviewed internally by Horizon and provided back to Welsh Water for comment week of 7 January. • National Grid: Protective Provisions have been reviewed internally by Horizon and provided back to NGET for comment on 2 January 2019. • Nuclear Decommissioning Authority: NDA has been included within the Magnox protective provisions and have been provided for comment. Horizon is awaiting formation from NDA as to whether it will be included within the protective provisions for Magnox. • IACC Highways: Protective Provisions have been reviewed internally by Horizon following the Deadline 3 (18 December 2018) submissions and Horizon will revert shortly to IACC. • Network Rail: <ul style="list-style-type: none"> - Network Rail and Horizon have discussed anticipated impacts on NR infrastructure (which Horizon considers is limited and largely relates to access). - The land in question is a very small section of land at the entrance of a freight yard that will only be used until the end of 2019. 	

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	<ul style="list-style-type: none"> - Horizon is reviewing Network Rail's draft protective provisions but considers they go beyond what the interest that is affected. Horizon will provide amendments to Network Rail later this month. • SPEN/ SP Manweb: Draft protective provisions being reviewed internally by SPEN and Horizon will seek to include these within the updated Draft DCO to be submitted at Deadline 5 (12 February 2019). • Wales & West Utilities: Draft protective provisions being reviewed internally by Wales & West Utilities and Horizon has held meetings to discuss impacts. • Telecommunications operators: Horizon has not received any comments from these operators. Draft protective provisions provide protections for these utilities. 	
Item 7 – Proposed s106 Agreement		
Introduction	<p>Counsel for Horizon, Michael Humphries QC, confirmed that Horizon has provided two drafts of the Draft DCO s.106 to IACC and Welsh Government on 26 October 2018 and 30 November 2018, the latter updated on 4 December 2018 (this being the version submitted to the ExA).</p> <p>Horizon has sought to take on board comments from IACC and Welsh Government, however, three fundamental issues remain outstanding including:</p> <ul style="list-style-type: none"> • who should be party to the agreement; • the role of the interested authorities; and • how to best allocate the five contingency funds where there are both local and regional effects. <p>This has been inhibiting engagement in relation to the detail of the agreement and progress towards a final agreement. Horizon understands that a bi-lateral discussion on the agreement was held on 20 December 2018 between IACC and the Welsh Government, however Horizon was not invited to that meeting.</p>	<ul style="list-style-type: none"> • Draft DCO s.106 Agreement [REP3-042].

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	A meeting between Horizon, the Welsh Government, IACC and GC is diarised for Monday 14 January 2019.	
<p>7(a) To consider legitimacy; governance arrangements; and the adequacy of the financial and other resources likely to be made available.</p> <p>7(b) To consider the suite of mirror provisions that would be required in the draft DCO in the event that the s106 Agreement is not agreed and signed before the close of the Examination.</p> <p>7(c) To explore and confirm how the interface between the s106 Agreement for the submitted planning application in respect of the site clearance and</p>	<p>Counsel for Horizon, Michael Humphries QC, made the following general points on behalf of Horizon:</p> <ul style="list-style-type: none"> • With respect to legitimacy and governance, Horizon considers that IACC is the only necessary counterparty. It is the local planning authority in whose administrative boundary the development will occur, and it is where effects will be concentrated (reflecting IACC's "Proximity Principle", where communities closest to the development should be appropriately recognised). • However, Horizon recognises that other authorities have a key role in delivering mitigation under the Draft DCO s.106 and effects further afield should also be addressed. As such the Draft DCO s.106 provides for payments to third party bodies (clause 6). This would still be contractually controlled by requiring that those third parties enter a deed of covenant with Horizon and IACC. • With respect to governance, the Draft DCO s.106 provided for the Wylfa Newydd Major Permissions Oversight Panel ("WNMPOP") as a representative body for the allocation of the five contingency funds, and the Skills Fund. • It was noted that the adequacy of financial contributions was not the focus of the discussion. However a summary of the proposed quantum is set out in para 1.5.6 (page 81) of Horizon's response to the IACC Written Representation. <p>Following comments from interested parties about the legitimacy, governance and adequacy of financial contributions, and the scope of the role of the WNMPOP, Counsel for Horizon made the following points in response:</p> <ul style="list-style-type: none"> • The Draft DCO s.106 currently imposes 48 financial obligations on Horizon. Of those, 39 financial obligations are committed payments to identified 	<ul style="list-style-type: none"> • Horizon response to FQW4.0.111 [REP2-375], see the table from page 97. • Quantum is summarised in para 1.5.6 (page 81) of Horizon's response to the IACC Written Rep [REP3-019] • Horizon response to FQW4.0.112 [REP2-375], see the table from page 109.

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<p>preparation works and the s106 Agreement proposed for the Wylfa Newydd development as a whole will be managed.</p>	<p>recipients and governed directly, for example, payments for most of these are made to IACC. Some are directed to other parties for example Betsi Cadwaladr University Health Board.</p> <ul style="list-style-type: none"> • Of the 48 financial obligations, five are contingency funds. Important context is that the proposed WNMPOP process only applies to those five contingency funds, and the Skills Fund, out of the 48 financial obligations. The contingency funds are all proposed in topic areas where there are committed payments to certain bodies for certain amounts but in which Horizon recognises there could be wider, sub-regional effects. For that reason, Horizon has proposed a system of monitoring to identify effects or trends that can be called upon by parties if the committed funds do not cover the issues. • Contingency funds are not proposed for all topic areas, but only in five limited instances where the extent of effect and its spatial location could be felt beyond Anglesey beyond the committed mitigation and contributions. For example, there is no contingency fund for Welsh language because the relevant assessments undertaken by Horizon has adequately identified the actual effects on those matters and appropriate mitigation has been set out and committed to. • The WNMPOP approach was put forward as a collaborative structure which would enable key stakeholders to come together to identify and allocate funds for further mitigation should the need arise. • There are a two funds that are not contingency funds i.e. they are fully committed and available, but against which applications for funding can be made. These are the Skills Fund and the Community Fund. • There are a further two voluntary environmental contributions provided for in the Draft DCO s.106: <ul style="list-style-type: none"> - Environment Enhancement Fund - Environment (Cemlyn Lagoon) Fund 	

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	<p>These have been offered on a purely voluntary basis. These are not offered as planning obligations in that they are not necessary to make the development acceptable.</p> <p>In response to IACC's statement that it will not sign an agreement which either has a third-party signatory or allows for payments to third parties, or includes a WNMPOP, Counsel for Horizon stated:</p> <ul style="list-style-type: none"> • That position in effect closes down a number of avenues and leaves only a few of options: <ul style="list-style-type: none"> - to execute the Draft DCO s.106 as a unilateral agreement. This is not Horizon's preference although it can be pursued; <ul style="list-style-type: none"> ◆ to strip out from the Draft DCO s.106 all contingency funds and either not provide for them at all or to provide for these in separate contractual arrangements with identified parties; or - to break down those contingency funds and distribute those monies directly to identified parties and in doing so, Horizon will be responsible for deciding where and how much those funds should be directed rather than inviting the parties to decide collaboratively. <p>Counsel for Horizon responded to the following points raised by other parties:</p> <ul style="list-style-type: none"> • In response to Gwynedd Council's comments regarding the need to consider the draft deed of covenant, Counsel for Horizon confirmed that the intention for providing for deeds of covenants between Horizon and third parties was to provide reciprocal enforceability of those payments both from Horizon's perspective and the third parties. • NRW requested that the Draft DCO s.106 provides security (in the form of the bond) in relation to Horizon's compliance with DCO Requirements ECS3 and WN12-14 (i.e. obligations to manage certain sites in accordance with 	

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	<p>approved management schemes). Counsel for Horizon stated that the obligation in the DCO is to comply with those requirements; not to do so is a criminal offence. In the usual way therefore, Horizon will ensure that it submits for approval the various management schemes required by these requirements and ensure that the management of those areas is carried out in accordance with the approved management schemes. There is no justification or need for security in respect of that compliance; that would not be standard or necessary.</p> <ul style="list-style-type: none"> • In response to the Welsh Government's comments about the impact of the Wylfa Newydd DCO Project outside of the Anglesey, Michael Humphries QC confirmed that while most of the committed payments are to Anglesey, respecting the proximity principle, there are a number of funds paid directly to other authorities (including GC, Conwy and the Welsh Government). In addition, several contributions are proposed to be paid direct to the entity responsible for delivering mitigation – for example Betsi Cadwaladr University Health Board. • Regarding who should be parties to the Draft DCO s.106, Counsel for Horizon confirmed that Horizon's preference is to avoid having multiple signatories to the Draft DCO s.106 and supported IACC being the sole counter-party. (This position assumed payments being made to third parties). Horizon notes the Welsh Government's desire to be a signatory however considers that could be managed through the Deed of covenant process proposed; it is, however, less sympathetic to North Wales Police being a contractual party noting that this would potentially open the Draft DCO s.106 to multiple parties with narrower interests. Horizon's preference is for legally binding deeds of covenants to enable it to make direct payments to third parties, as was the case for the police in the case of Hinkley. • Noting the short timeframes left for progressing the Draft DCO s.106 and in light of IACC's very clear position on the matter, Counsel for Horizon noted 	

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	<p>that a radical rethink of the proposed Draft DCO s.106 is required including consideration of a unilateral undertaking. Counsel for Horizon noted, however, that this is not the only option. Horizon will explore both internally and with others what else could be done to satisfy as many parties as possible including exploring with IACC whether there is scope for movement within its submission.</p> <p>Counsel for Horizon advised that in light of the comments made by interested parties with respect to the Draft DCO s.106, particularly IACC's strong opposition to the current allocation structure for contingency funds, the Draft DCO may require amendments to establish the necessary allocation body to allocate contingency funds provided for in the Draft DCO s.106. Further thought also needs to be had to a unilateral undertaking.</p> <p>In respect of a unilateral undertaking, Counsel for Horizon confirmed:</p> <ul style="list-style-type: none"> • The obligations (or a form of them) currently proposed in the Draft DCO s.106 could be provided by way of Horizon delivering a unilateral undertaking to IACC. • Horizon could unilaterally undertake to make payments to third parties; alternatively, Horizon could unilaterally undertake to make payments to IACC to distribute to third parties. • The allocation of the payments identified as contingency payments could continue to be allocated via an oversight panel (i.e. the WNMPOP). This could be established and secured under the Wylfa Newydd COCP rather than the Draft DCO s.106. • Alternatively, Horizon would reconsider withdrawing contingency funds and instead provide for direct distribution. • In respect of whether the non-financial obligations, these could potentially sit in a unilateral undertaking or in a separate “social obligations” document 	

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	secured by a new DCO Requirement. However, Horizon considers either option would appropriately ensure their delivery.	

**SARAH PRICE**

EXPERT WITNESS FOR PLANNING POLICY AND SITE SELECTION

AREA OF SPECIALISM

Sarah has 17 years of professional experience working in the private sector. She was previously at Town Planning Consultancy and RPS and then a Director of Quod for 7 years before moving to DWD in 2017 where she is a Partner. Sarah has been working in major infrastructure projects since 2008 when she started advising Heathrow Airport Limited on the third runway proposals and has since specialised in DCOs through her work on other significant infrastructure schemes. Sarah has also advised on a range of other commercial and mixed use projects and has provided expert witness evidence at Inquiry and participated in DCO examinations and Examinations in Public.

PROFESSIONAL ORGANISATIONS

- Royal Town Planning Institute
- National Infrastructure Planning Association

QUALIFICATIONS

- BA Hons Urban Planning and Management
- Diploma in Town Planning

RELEVANT WORK EXPERIENCE

Sarah was the planning lead for DONG Energy (now Orsted) for the Walney Extension Offshore Windfarm DCO, including coordinating the Statement of Common Ground with the local authorities and expert planning policy support through submission. Sarah was a key member of the planning team for EDF for Hinkley Point C, answering questions and appearing at the examination in relation to Associated Development sites and the highway schemes. Sarah spent nearly 10 years advising Heathrow Airport Limited in relation to the third runway, including expert DCO advice. Sarah has been advising Horizon on Wylfa Newydd for around 3 years and provides expert planning advice and appeared at the Gwynedd and Anglesey Local Plan examination on behalf of Horizon.

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