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ISLE OF ANGLESEY
COUNTY COUNCIL**

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Eich Cyf / Your Ref: EN010007

Dyddiad / Date: 17th April 2019

Ms Kay Sully,
The Planning Inspectorate,
National Infrastructure Planning,
Temple Quay House,
2, The Square,
Bristol,
BS1 6NP

Dear Kay,

Wylfa Newydd DCO Examination EN010007 - Deadline 10 Submission

IACC has reviewed Horizon's Deadline 9 submission and has the following comments:

1. Phasing Strategy – REP9-025

As advised at Deadline 9 the Applicant and the IACC have been in continuing discussion as to the phasing strategy. As a result of this, IACC and HNP have agreed the amendments below. Essentially the changes have been made in response to alignment of the worker profile with the phasing strategy and to ensure that, if the site preparation and clearance works are undertaken concurrently with the development, the mitigation is in place at the appropriate time. The changes below ensure that this is the case and that the overall impacts remain with the Environmental Statement.

- New Figure 2-2 to be inserted which shows the construction worker profile across the entire construction period.
- Update to Figure 2-1 to move last delivery dates for the Park and Ride and Logistics Centre forward one quarter.
- Update to Table 2-1 to update triggers for P&R:
- Add reference to phasing – Phase 1 (600), Phase 2 (600), Phase 3 (balance)
- Provide a trigger for delivery of Phase 3 prior to the exceedance of 3,000 workers travelling to the WNDA main site. This excludes workers elsewhere on the project, such as on the A5025 works.
- Add a comment that earlier delivery of Logistics Centre and Park and Ride will require the undertaker to make timely submission of applications for the discharge of requirements and to facilitate this IACC will, where required, agree to accelerated submission of these ahead of the anticipated timetable under schedule 19. Good consultation pre-submission needs to be committed to by both parties to facilitate this.

Section 106

As a result of the discussions on the phasing strategy highlighted above, a number of amendments have also been made to the s106. These changes are:

- to amend the Worker Accommodation (Capacity Enhancement) Contribution provision, such that the first instalment of the respective payments to IACC, Gwynedd Council and Conwy Council is 30% of the whole (rather than 10%) and shall be paid 12 months prior to Commencement (rather than prior to Implementation);
- to amend the Education Contribution provision, such that the first instalment of the payments to IACC is 30% of the whole (rather than 10%) and shall be paid 12 months prior to Commencement (rather than prior to Implementation);
- to amend the Transport Contribution such that the first instalment shall be paid six months prior to Commencement (rather than prior to Implementation)
- to amend all ten Financial Contributions in Schedule 15 (which relate to Site Preparation and Clearance) such that these shall be paid 12 months prior to Commencement (rather than prior to Implementation);
- to ensure that, unless otherwise agreed with the Council, the Developer cannot commence the Wylfa Newydd DCO Project earlier than 12 months from the date at which the above contributions are paid;
- to ensure that the Developer can only give notice of its intention to commence Site Preparation and Clearance Works under a TCPA Permission where such a permission has been granted by the Council at the date of such notice. The notice must be given within 12 months prior to anticipated Commencement.

2. DCO – Schedule 19 – Fees for Discharging Requirements

- DCO Schedule 19 – Fees

Following the submission of the revised DCO at Deadline 9, discussion between the Applicant and IACC on the appropriate level of fees for the work required to discharge conditions has progressed. This has resulted in a change in approach from a per requirement fee based on area and capped, to a blended approach of annual funding to provide internal resource within IACC and cost recovery of external input where that is required. The parties have now reached an agreed position on that schedule. That position consists of payment of an annual fee by the Applicant to the Council which will be used to provide planning and project management officer time and support the use of specialist internal resource, such as highway officers. For major requirements, the parties will also agree a payment towards the cost of obtaining external input where that is necessary to properly determine the discharge application; for example IACC do not have internal landscape architects or lighting specialists and input on those matters will therefore be procured from appropriately qualified external consultants.

While the IACC accepts that this agreement has been reached late in the process, given that the revisions to Schedule 19 are supported by the Council and the Applicant and provide certainty that the necessary resources to discharge the DCO requirements can be secured, the Council asks the Examining Authority to accept the revisions to schedule 19.

- DCO schedule 19 – Timescales

The IACC notes the continuing disagreement between the parties on suitable timescales for considering discharges. The Council also notes that NRW have highlighted a concern that they may not be able to issue consultee responses within the period currently allowed.

The IACC supports NRW's request for a full 28 days to be allowed for consultee responses. This would of course require that determination periods overall require to be longer than currently proposed by the Applicant, particularly for minor requirements, so that the IACC has a meaningful opportunity to consider and discuss consultee responses received. The IACC accordingly maintains its position that the determination periods should be 8 weeks for minor requirements and 12 weeks for major (16 weeks where further environmental information is required) and the schedule must include the ability to suspend any period in accordance with the requirements of the Infrastructure Planning EIA regulations.

3. Horizon's Response to the ExA's Request for Further Information (REP9-006)

R17.2.17 - Schedule 1 – Other Associated Development

(c) expedient” – Can the Applicant provide any examples of judicial authority (in other contexts) which would give some indication of the limits which might be applied to the term “expedient”.

[REP8- 004 DCO Outstanding Issues Register]

(d) IACC may wish to comment.

IACC notes the Applicant's response to this question setting out that 'expedient' should be given its normal meaning; the IACC agrees with the approach as being supported by case law but notes it is the very breadth of the normal meaning of expedient set out by the Applicant which causes the Council concern. The IACC notes that the definition given includes 'conducive to advantage' – that creates an enormously wide ability for the Applicant to do anything to their own advantage and makes the application of planning control to any works impractical.

Given the scope of the other provisions in this part of schedule 1 the IACC submits again that the Applicant has made no positive case for what works are not already covered and for which this power is required in the facts and circumstances of this DCO. The Applicant has made no convincing argument as to why such a wide power, which creates a broad scope for potential, undetailed, undescribed works to be carried out, is necessary for them. The IACC does not accept that simply because this wording has been included in other DCOs that renders it acceptable in this situation where the Applicant would be creating a very wide power to carry out unspecified works over multiple sites in varying locations and circumstances.

The inclusion of 'expedient' also renders the decision as to whether the taking of enforcement action is necessary by the IACC difficult and thereby fails to protect the Island's communities. The IACC continues to object to the inclusion of 'expedient' in p).

R17.9.1 - Comment on the proposition that, although temporary, the Site Campus is a large, prominent development and consequently there may be merit in ensuring the design process would benefit from advice from the Design Commission for Wales secured within the Design and Access Statement?

As stated in the IACC's Post Hearing Note on Housing and Construction Workers Accommodation [REP7-014 paragraph 3.2.3], the IACC would request that Horizon discuss the design and layout of the Site Campus with the IACC prior to the submission of the detailed design under DCO Requirement WN19. This will ensure that visual impacts will be mitigated, as far as possible, through appropriate use of colours, textures and materials.

Given the time tight timescale to discharge requirements, the IACC does not believe that it is prudent to consult with Design Commission for Wales (DCfW) after the submission of the Site Campus design for approval under Requirement WN19. The IACC would fully support the involvement of the Design Commission for Wales (and other statutory consultees as necessary) at the early stage of

the detailed design to ensure that the design fully reflects the Design Principles confirmed in the Design and Access Statement and concerns raised by other stakeholders.

The IACC acknowledge that the Design Commission for Wales were consulted during the pre-application stage, however no details on the detailed design were included at this stage. Therefore the IACC would support the involvement of the Design Commission for Wales prior to the submission of the application to discharge Requirement WN19 for completeness.

4. Rule 17 – Request for further information

R17.2.2.1 – Respond to the proposal for a Memorandum of Understanding by the Applicant in response to Q17.2.6 (REP9-006)

Since Deadline 9, IACC has sought to understand why HNP in response to Written Question R17.2.6 is now proposing further amendments to the DCO, which seeks not only for HNP to be party to the MoU between the IACC and NRW but also provides that they will draft it and provide to the public bodies “for comment”. The IACC maintains the position clearly set out in its response to this question that there is not and never has been any intention of the Applicant being a party to this MoU which will set out how two public bodies with statutory roles and duties will operate.

The IACC does not agree that it is appropriate for such an agreement to be able to be determined by arbitration. IACC and NRW are both aware of and sensitive to the statutory, policy and process needs of the other – the same cannot necessarily be said of a private company that does not operate under the same constraints. It would not be appropriate for a private company to draft and seek to have imposed by arbitration, an agreement which the public body considers conflicts with their requirements.

The MoU proposed by the IACC and NRW between themselves is administrative in nature and simply sets out how and when they will share information, discuss issues and escalate concerns. There is no appropriate role for the Applicant in that administrative agreement between public bodies. The IACC accordingly objects to the insertion of paragraph (4) in schedule 19 and the proposed insertion of paragraph (5) for the reasons set out in this answer.

In order to provide further reassurance that IACC and NRW have an established and effective working relationship in place, a draft MoU is included in Annex 1 for information. With regard to when this would be finalised, Schedule 19 requires the developer to provide 6 months’ notice to both the Council and NRW prior to the submission of any applications to discharge requirements. This period will allow this MoU to be completed with the current, applicable details at that time.

R17.2.2.5 – DCO Article 74 operational land for purposes of 1990 Act

a. What development could be undertaken through permitted development rights if the land was to be considered as operational land?

b. How and where should the drafting of the DCO be amended to overcome this issue?

- a) The IACC’s concern with the classification of all of the order land as operational land relates to the very wide power granted to electricity undertakers under Class B of Part 15 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as it would relate to the land outside the main site only.

That class allows electricity undertakers to carry out development for the generation of electricity for the purposes of their undertaking including at (f), “any other development carried out in, on, over or under the operational land of the undertaking”. The effect of Article 74 is to bring all of the order land within the scope of operational land. The IACC entirely agrees that

the electricity undertaker permitted development rights should be available on the main generating station site. However it is inappropriate for it to be available on the associated development sites which are required for the construction of the generating station not the generation of electricity or the purposes of the undertaking which is generation of electricity. The nature of the uses of the AD sites, including that many of these are temporary, should guide the permitted development rights available, eg the Logistics Centre should benefit from any rights which would be available to any other temporary distribution use, not electricity generation.

This power under Class B of Part 15 is limited by paragraph B1. These limits relate to the scale of development not type, eg for the (f) power quoted the limitations only prohibit:

- (i) the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected, or
- (ii) the installation or erection by way of addition or replacement of any plant or machinery exceeding 15 metres in height or the height of any plant or machinery replaced, whichever is the greater.

This permitted development right could accordingly be used to change the layout, levels, landscaping, lighting or configuration of buildings, or allow installation of plant of considerable size, or permit any other matter which is not controlled by the limitations.

- b) Article 74 of the DCO be amended to restrict the application of the DCO as a specific planning permission for the purposes of s264 of the 1990 Act to the main site only. This could be achieved by insertion of a limitation to the WNDA (red text is text recommended for insertion):

Operational land for purposes of the 1990 Act

74. **Within the Wylfa Newydd Development Area Order Limits as identified on WN0902-HZDCO-RLB-DRG-00002, WN0902-HZDCO-RLB-DRG-0003, WN0902-HZDCO-RLB-DRG-0004, WN0902-HZDCO-RLB-DRG-0005 and WN0902-HZDCO-RLB-DRG-0006,** development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

R17.2.7.1 – *Provide a joint statement setting out an agreed position with regards to the IACC's request to re-provide a turning head in the layby adjacent to the proposed access to the WNDA raised in the IACC's D9 submission (pages 9/10). In particular can the IACC advise what their position would be if the turning head was not re-provided.*

The IACC understands that the Council and HNP are in agreement regarding the proposal to re-provide a turning head area in the layby adjacent to the proposed access area to the WNDA as raised in the IACC's D9 submission (REP9-031).

- Reasoning to re-provide a turning head area

As a direct consequence of implementing the WNDA junction access arrangement, the existing vehicular turning area will be lost. Horizon's General Arrangement plan WN0902-HZDCO-OHW-DRG-00063 Revision 4.0 (2.6.1 WNDA – Power Station Site Plans) indicates the southern junction of the layby will be in use, thus avoiding the need to re-provide a vehicle turning area. Currently, due to the existing poor visibility at the southern junction, raised granite block paving has been laid to deter vehicles from using this junction (shown below). The IACC would deem it inappropriate, in the interest of road safety, to provide a junction at this location.



To mitigate for the loss of the existing vehicle turning head, the IACC seeks the provision of a new (alternative) vehicle turning head area adjacent the existing layby as part of the WNDA junction access arrangement works (whereby HNP are in agreement). The proposed location of the new vehicle turning area is within HNP land ownership and is within the red line boundary. The IACC see no alternative solution to re-providing a turning head area to what is proposed (as previously agreed between both parties).

- **Securing the turning head area within the DCO process**

There is disagreement between HNP and IACC on how the turning area should be secured within the DCO process.

As per the IACC's REP9-031 submission, to enable this proposed turning head area to be dedicated as a public highway, the purple dashed line (centreline of proposed highway) would require extending on the Right of Way Plan (**REP8-024** page 33).

To secure this proposed turning head area as part of the DCO process, the relevant plans including A5025 Off Line Highway Improvements Section 9 – Power Station Access Road Junction Proposed General Alignment WN0902-HZDCO-OHW-DRG-00063 Revision 4.0 (2.6.1 WNDA – Power Station Site Plans) (**REP8-027**) and A5025 Off-line Highway Improvements Section 9 – Power Station Access Road Junction Right of Way WN0902-HZDCO-ROW-DRG-00030 (2.4 Right of Way Plans Revision 3.0) (**REP8-024**) must be revised accordingly to accommodate this proposal in order to allow the DCO to consent this approval.

HNP have advised that there is not sufficient time to amend the drawings which would be affected by this change and that this turning area can be included in the design approved at the detailed design stage. The IACC has concerns as this will not be a DCO Requirement and therefore is not secured within the DCO.

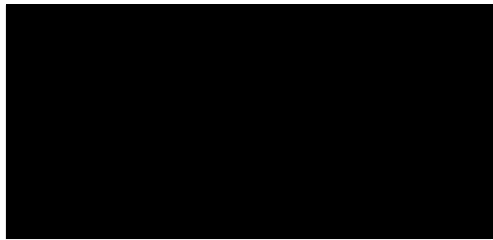
The IACC understands that changing drawings to include this turning head would be difficult at this stage however, in order to secure the re-provision, the IACC requests that requirement WN1(3) is amended by addition of a new item (h) requiring a scheme to be submitted for approval as follows:

(h) A scheme for the provision of a vehicle turning head which will form part of the public highway at the layby adjacent to access to the WNDA, which scheme must include the details of the design of the turning head, details of when this will be delivered, together with an explanation of how this will be dedicated as public highway, how it will be classified and what traffic regulation measures (including any applicable speed limits or waiting restrictions) will be put in place over the turning head prior to it opening for use for by the public.

The general principle of re-providing the turning area can be seen in the drawing provided in Annex 2.

Welsh versions will be submitted as soon as translations are available.

Yn Gywir / Yours Sincerely



DYLAN J. WILLIAMS

Pennaeth Gwasanaeth – Rheoleiddio a Datblygu Economaidd
Head of Service - Regulation and Economic Development

Annex 1 – DRAFT MoU submitted for Information

DRAFT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made between the Isle of Anglesey County Council (“IACC”) and Natural Resources Wales (“NRW”).

This Memorandum of Understanding relates to the application for a development consent order made by Horizon Nuclear Power for the proposed Wylfa Newydd, which project includes both landward and marine works. This Memorandum sets out how the parties propose to work in partnership when dealing with elements of the project which either include both landward and marine elements or which are located in the inter-tidal area.

For the purposes of this Memorandum:

“DCO” means the Wylfa Newydd (Nuclear Generating Station) Order 20[]

‘inter-tidal’ means the area between Mean Low Water Springs and Mean High Water Springs.

“Work” means any part of the authorised development set out in schedule 1 of the DCO

1 KEY PRINCIPLES

The parties have agreed the following key principles:

- 1.1 Nothing in this Memorandum of Understanding shall fetter the statutory powers and/or duties of either IACC or NRW.
- 1.2 IACC shall be consulted by NRW on any application made to NRW to discharge any requirement under the DCO which includes any Work in the inter-tidal area or which extends landward over MHWS.
- 1.3 NRW shall be consulted by IACC on any application made to IACC to discharge any requirement under the DCO which includes any Work which extends seaward over MHWS.
- 1.4 Whereas it is agreed that both parties have legitimate interests in the inter-tidal area and that the IACC as local planning authority would have development control responsibilities for this area;
 - (a) NRW shall give serious and meaningful consideration to any representations made by IACC on issues which fall within the planning authority remit, including but not limited to visual impact, landscape impact, impact of lighting (as it pertains to visual impact, amenity and dark skies), working hours, onshore amenity and human health and wellbeing including noise impacts, dust and air quality and impact on the historic environment.
 - (b) Where the IACC has raised an objection to any application for discharge covered by this Memorandum, and where NRW is minded to approve the application, NRW shall seek to use all reasonable endeavours to meet with the IACC (and where applicable the undertaker) to discuss the application under consideration prior to issuing any decision.
- 1.5 Where IACC are considering any application for discharge of a requirement for any Work landward of MHWS which extends into the intertidal area, and NRW has raised an objection to approval of such an application, and where IACC is minded to approve the application, IACC shall seek to use all reasonable endeavours to meet with the NRW (and where applicable the undertaker) to discuss the application under consideration prior to issuing any decision.

2 WORKING PRACTICES

The parties have further agreed the following in order to efficiently carry out their relevant roles while having regard to the agreed key principles:

2.1 Key points of contact of Wylfa Newydd issues

IACC and NRW shall provide and keep up to date a key contact point for the other in relation to Wylfa Newydd issues. The initial contact details are set out in this section but can be superseded in writing at any time where either party advises the other of a change.

IACC Key contact details:

Role

Address

Phone

Email

NRW Key contact details:

Role

Address

Phone

Email

Correspondence and official communication between IACC and NRW

2.2 Agreement to engage in joint consultation prior to submission of any application

The parties agree that they shall endeavour to engage appropriately in any relevant pre-application consultation or discussion offered by the undertaker of the Wylfa Newydd project prior to the submission of any application for discharge.

2.3 Agreed response times to respond to formal consultations

The parties note the timescales for approval under the process set out in Schedule [19] of the DCO. In order to allow the discharging party to comply with those timescales the parties shall use all reasonable endeavours to:

- (a) provide the other with a copy of any application received as soon as reasonable practical following receipt; and
- (b) respond to any formal consultation as soon as reasonably practicable but in any event by the date for submission of consultation responses.

Further the parties agree that;

- (c) when providing a copy of any application the discharging authority shall when providing a copy of an application received, use reasonable endeavours to advise the consulted party on the dates by which consultation responses are sought, the date by which a decision is required under schedule [19] and any constraints that party has in complying with that (for example that internal approval processes require a set number of working days);
- (d) the consulted party shall use reasonable endeavours to notify the discharging authority of incomplete or inadequate information in any application as soon as practicable following such identification.

2.4 Information sharing

Other than where precluded by statute, or where the parties do not consider it lawful or appropriate to do so, the parties shall share information with each other as often and in so far as is necessary to facilitate the undertaking of the obligations set out in this agreement. In particular the parties shall send to each other as soon as reasonably practical a copy of any application received, copies of responses made by any other consultee (where requested), and a copy of any draft conditions proposed to be attached to any approval for comment prior to the making of any decision,

3 RESOLVING CONCERNS

3.1 In the event that a dispute arises between the Parties relating to the interpretation or application of this MoU it shall be referred to the escalation contacts named below for resolution.

3.2 The escalation contacts shall seek to agree between them the appropriate course of action to resolve the dispute.

3.3 The escalation contacts are:

IACC

NRW

Role

Role

Address

Address

Phone

Phone

Email

Email

Signed for and on behalf of IACC

Signed for and on behalf of NRW

Annex 2 - Proposed Re-Provision of Turning Head Area

