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20 December 2019

For the attention of Mr Gareth Leigh (Head, Energy Infrastructure Planning)

Dear Mr Leigh,

Application by Horizon Nuclear Power Limited for an Order Granting Development Consent for the proposed Wylfa Newydd Nuclear Power Station, Isle of Anglesey, North Wales

RE: REQUEST FOR INFORMATION AND COMMENTS ON THE APPLICATION, AND NOTIFICATION OF THE SECRETARY OF STATE'S DECISION TO SET A NEW DATE FOR DETERMINATION OF THE APPLICATION - EN010007

Thank you for your letter dated 23 October 2019 requesting Natural Resources Wales' comments on matters raised in your letter.

The comments provided in this submission comprise our response as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'interested party' under s102(1) of the Planning Act 2008.

In addition to NRW being an interested party under the Planning Act 2008, NRW exercises functions under legislation including (but not limited to) the Environmental Permitting (England and Wales) Regulations 2016 (as amended), Water Resources Act 1991 and Marine and Coastal Access Act 2009. For the purpose of clarity, comments from NRW's Permitting Service are noted as such and are provided in sections 1 and 2 (in response to paragraphs 2 to 4 of your letter) and are without prejudice to the separate determination of those processes. Comments pertaining to our advisory role are provided in section 3 to 10 (in response to paragraphs 6 to 11, 13 to 18, 20 and 37 of your letter).

We provide comments on those matters requested by the Secretary of State, as well as other matters where we consider that clarification of NRW's position would be of assistance.

Our comments are as follows:

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NRW REGULATORY COMMENTS

1. Licences and Consents

RESPONSE TO PARAGRAPH 2 OF YOUR LETTER

- 1.1 With regard to the combustion plant installation permit (paragraph 2 in your letter), at the time of withdrawal of the permit application by the Applicant, the air quality modelling was not at a stage where NRW could robustly say that it represented a worst-case scenario. NRW and the Applicant had reached an agreement on a proposed modelling methodology, however it is likely that NRW would have requested further information from the Applicant, depending on the findings of the modelling sensitivity analysis, prior to making a decision on the combustion plant installation permit.

RESPONSE TO PARAGRAPH 3 OF YOUR LETTER

- 1.2 From NRW's perspective, the withdrawal of some of the permit/licence applications for the Wylfa Newydd project has potential implications for the adequacy of the appropriate assessment of the project as a whole that is required pursuant to the Conservation of Habitats and Species Regulations 2017 ("the Regulations").
- 1.3 Where a project requires, as is the case for Wylfa Newydd, multiple consents, it is not necessary for a competent authority to carry out an appropriate assessment of all the project's implications for the European site before *any* consent can be granted, if some of those implications would be more appropriately assessed by another competent authority: see Regulation 67(2), the Regulations. It would be open, therefore, to the Secretary of State, when determining the application for the DCO, to conclude that certain aspects of the appropriate assessment for Wylfa Newydd would be more appropriately provided to, for example, NRW when determining the outstanding permit/licence applications.
- 1.4 At the time of writing, the Applicant has withdrawn three of its applications for environmental permits for the project, whilst the applications for (i) a marine licence; and (ii) an environmental permit for discharging construction water are maintained. NRW is the competent authority for all these consents. The pursuit of only some of the permits/licences to be granted by NRW creates a difficulty as there is no provision in the Regulations allowing a competent authority to defer part of the appropriate assessment of a project to a subsequent (but different) consent to be determined by the same competent authority. NRW must comply with Regulation 63(1), which requires a competent authority to make an appropriate assessment of the implications of "the project" before deciding to "give any consent...". In the same vein, reg. 63(5) prohibits a competent authority from "agreeing" to "the project" until it has "ascertained that it will not adversely affect the integrity of the European site".

- 1.5 We are therefore unable to provide you with information that could provide clarity on what conclusions could be made on any risks or impediments to the management of impacts as we do not have the full suite of licence applications required by this project to enable us to do so.
2. *Representations of the Government of the Republic of Ireland under the Espoo Convention*

RESPONSE TO PARAGRAPH 4 OF YOUR LETTER

- 2.1 We note that the representations made under the Espoo convention discuss operational/routine radiological discharges. For information, NRW's regulatory function had received a suite of environmental permit applications from Horizon Nuclear Power, one of which was an application for an environmental permit to dispose of radioactive waste from the proposed nuclear power station. Our determination of this permit application would include an assessment of the radiological dose assessment made by the Applicant. We also undertake an independent dose assessment to assure ourselves that people and the environment are adequately protected from both routine and reasonably foreseeable discharges, and that the facility will comply with legal limits and constraints. In addition to any limits, Operators are required to apply Best Available Techniques (BAT) to ensure doses to the public are kept as low as reasonably achievable (ALARA). The applicant withdrew this application in February 2018. If the project were to be re-initiated at some point in the future the developer would need to re-submit their application to NRW.

NRW ADVISORY COMMENTS

3. *Imperative Reasons of Overriding Public Interest (IROPI)*

RESPONSE TO PARAGRAPH 6 OF YOUR LETTER

- 3.1 No additional information has been provided to us by the Applicant since the close of the Examination in relation to alternative solutions, IROPI or compensation. The Applicant provided information relating to these matters at Deadline 5 [REP5-044] as well as additional information, specifically relating to compensation, at Deadline 9 (see our comment 3.4 below).

Alternative solutions

- 3.2 We direct the Secretary of State to section 1.2 of our Deadline 8 submission [REP8-080] where we provided comments on the Applicant's HRA Stage 3 Assessment of Alternative Solutions report as submitted by the Applicant at Deadline 5 [REP5-044]. As detailed in section 1.2 of our Deadline 8 submission, the only alternative solution that has been proposed by the Applicant that we (as the Appropriate Nature Conservation Body) consider would potentially not have an adverse effect on the

integrity of the Anglesey Terns SPA would be solution number 19 (Avoid blasting and construction during the tern breeding seasons). We note in Table 5-2 of [REP5-044] that this solution is ruled out by the Applicant as it would not meet/deliver the Project need or objectives.

Imperative reasons of overriding public interest

- 3.3 As the Appropriate Nature Conservation Body for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), we have no comments regarding the test of imperative reasons of overriding public interest. This is a matter for the competent authority.

Compensation

- 3.4 With respect to the compensatory measures proposed by the applicant at Deadline 9 within the Tern Compensation Proposal [REP9-028], Main Power Station Site Sub-CoCP [REP9-011] and Marine Works Sub-CoCP [REP9-013], we refer you to advice that we provided within Annex A of our Deadline 10 response [REP10-035]. In our Deadline 10 response, we proposed amendments that are required to the draft DCO in order to secure appropriate compensation measures that would meet the requirements of Regulation 68 of the Habitats Regulations. NRW's advice remains unchanged. The draft DCO Requirement provided in **Box 1** of NRW's Deadline 10 response should be included in the DCO if made. This would provide comfort to NRW that appropriate compensation measures will be secured and that accordingly the overall integrity and coherence of the SPA network would be maintained.

4. *Ecological Mitigation Sites*

RESPONSE TO PARAGRAPH 7 OF YOUR LETTER

- 4.1 Paragraph 1.3.1 of the Landscape and Habitat Management Strategy [REP8-063] states that the Ecological Mitigation Sites leased by the Applicant until 2032 relate to the Notable Wildlife Enhancement Site and the Reptile Receptor Site. We have no comments to make with respect to locally important species and/or partially protected species. We consider that the local authority is the most appropriate body to advise on these issues and therefore refer you to the relevant local authority for further advice.

5. *Mitigation of Onshore Construction on Sandwich Tern*

RESPONSE TO PARAGRAPH 8 OF YOUR LETTER

Noise

- 5.1 We set out our position regarding the Applicant's Tern noise mitigation proposals within paragraph 7.8.31 (Annex A) of our Deadline 2 Written Representation [REP2-325] and Section 2.1 (Annex A) of our Deadline 5 submission [REP5-081]. As explained in detail within these responses, we have significant concerns regarding the effectiveness and deliverability of the Applicant's noise mitigation proposals. As an example, NRW has concerns that, where noise levels are exceeded, the decision-making process on mitigation measures will be guided by several criteria. These criteria would be subject to safety considerations, the availability of equipment and impacts on the overall construction programme. In view of this, NRW cannot be satisfied that adequate and effective mitigation could be implemented.
- 5.2 We note that within the HRA Stage 3 Assessment of Alternative Solutions report submitted by the Applicant at Deadline 5 [REP5-044], mitigation that involves avoiding blasting and construction during the tern breeding season is ruled out as it would not meet/deliver the Project need or objectives.
- 5.3 We can confirm that following the close of the examination, no new information has been provided by the Applicant regarding our concerns about the effectiveness and deliverability of the noise mitigation proposals. As a result, no agreement has been reached. However, in relation to mitigation, we are not aware of feasible mitigation that may be proposed by the Applicant that would demonstrate, beyond reasonable scientific doubt, that there would be no adverse effects on the Anglesey Terns SPA. We therefore direct the Secretary of State to our Deadline 2 and Deadline 5 responses which highlight our concerns regarding the effectiveness and deliverability of the Applicant's mitigation proposals.
- 5.4 As detailed in paragraph 5.1.4 (Annex A) of our Deadline 7 submission [REP7-012], NRW's role in this process is to advise on the correct legal approach. The legal test which has been articulated repeatedly by the European Court of Justice is that there should be no reasonable scientific doubt about the absence of adverse effects on the European protected site, applying the precautionary principle. As a result of possible disturbance (both noise and visual) to breeding terns, NRW advise that there is reasonable scientific doubt, in this case, regarding the absence of adverse effects on the integrity of the Anglesey Terns SPA.

RESPONSE TO PARAGRAPH 9 OF YOUR LETTER

Visual disturbance

- 5.5 We have provided advice regarding visual disturbance within paragraph 7.8.22 (Annex A) of our Deadline 2 submission [REP2-325], section 3.1 (Annex A) of our Deadline 9 submission [REP9-037], and paragraph 1.1.5 (Annex B) of our Deadline 10 submission [REP10-035]. We advise that it cannot be demonstrated, beyond reasonable scientific doubt, that the colony will not abandon the site or that the works will not lead to an increase in fly ups, leading to a decrease in productivity due to cooling of eggs or predation. This is as a result of the combined visual and noise stimuli from the whole construction works, including the activity on land and within the marine environment. For example, in addition to increased construction noise stimuli

at the colony, terns flying in and out of the colony during their foraging trips will also be subject to a significant change to their visual environment due to the scale of construction works and associated machinery. The stress caused by these visual stimuli has the potential to act cumulatively with the effects of noise stimuli.

- 5.6 No additional information with regard to visual disturbance has been presented by the applicant following the close of the Examination. However, as highlighted above in paragraph 5.3, we are not aware of feasible mitigation that may be proposed by the Applicant that would demonstrate, beyond reasonable scientific doubt, that there would be no adverse effects on the Anglesey Terns SPA.

RESPONSE TO PARAGRAPH 10 OF YOUR LETTER

Disturbance from Recreational Users

- 5.7 As detailed in paragraph 7.8.21 (Annex A) of our Deadline 2 submission [REP2-325], at its peak there will be 9,000 workers on site which brings the risk of off-site recreational disturbance e.g. at Cemlyn Bay. As Cemlyn Bay is off-site, we note that the Applicant's control over the workforce out of contracted hours would be limited.
- 5.8 We note that the final signed section 106 submitted at Deadline 10 [REP10-009] includes £90,000 to fund a Tern Warden at Cemlyn over the period of the construction phase (which may itself be longer than envisaged under a project of this scale). However, there may still be occasions (times or places) where warden(s) may not be able to manage increased visitor numbers.
- 5.9 No additional information has been presented by the applicant regarding recreational disturbance following the close of the Examination, and no agreement has therefore been reached. However, we accept that no additional measures (other than the compensation measures referred to in 3.4 above) may reasonably be proposed by the Applicant. To conclude, we advise that there remains a residual risk of disturbance from recreational users, which would add to the noise and visual disturbance discussed above.

RESPONSE TO PARAGRAPH 11 OF YOUR LETTER

Dee Estuary SPA

- 5.10 Within paragraph 7.9.1 (Annex A) of our Deadline 2 submission [REP2-325], we advised that an adverse effect on the passage Sandwich tern feature of the Dee Estuary SPA could not be ruled out. This is due to the connectivity between the passage tern feature of the Dee Estuary SPA and the breeding tern population at Cemlyn Bay (Anglesey Terns SPA). Provided that the effects on the Anglesey Terns SPA can be appropriately compensated for in accordance with Regulation 68 of the Conservation of Habitats and Species Regulations 2017 (as discussed in our paragraph 3.4 above), we advise that the compensation would also address any risk of adverse effect on the Dee Estuary SPA.

6. Sites of Special Scientific Interest (SSSI) Network

RESPONSE TO PARAGRAPHS 13 and 14 IN YOUR LETTER

6.1 SSSIs are selected according to rigorous Joint Nature Conservation Committee guidelines to ensure common standards and representative coverage across Great Britain. In particular, the use of “Areas of Search” (AoS) ensures that the resource of flora and fauna within each geographical selection area is evaluated and appropriate examples selected and notified as SSSI. The process requires that SSSIs serve both a national function in ensuring a full geographical representation of variation and a local function in ensuring that the best of the local resource is protected in each selection area. We provide the following advice in relation to the SSSIs highlighted in paragraph 14 of your letter.

Tre'r Gôf SSSI

6.2 In relation to Tre'r Gôf SSSI, and as advised in paragraph 7.13.4 (Annex A) of our Deadline 2 submission, based on the ES and supporting ES Appendices we advise that the proposed works are likely to significantly affect the functioning of the SSSI and likely to damage the SSSI features. The Applicant has proposed several mitigation measures; however it is accepted by all parties that the measures may not fully mitigate the potential impacts and that there is a significant risk of permanent loss or damage to the site.

6.3 We also note that the Applicant has provided a SSSI compensation package which proposes fen habitat creation (Cors Gwawr and Cae Canol-dydd) to compensate for the potential long-term damage to the SSSI. As advised in section 3.12 of our Deadline 4 submission, there are several uncertainties at this stage regarding the fen creation proposals and it cannot be concluded that the fen creation will fully compensate (in terms of habitat quantity, quality or type) for the worst-case potential damage to the SSSI.

6.4 Tre'r Gôf is selected within the “West Gwynedd” Area of Search (AoS) as a good example of a “rich fen” basin mire, and certainly as the most northerly example in Wales. West Gwynedd is unusually well-blessed with calcareous rich-fen SSSIs, including the complex of sites within the Corsydd Mon and Corsydd Llyn SACs (and Corsydd Mon a Llyn Ramsar site). Indeed, it is the only selection area in Wales to boast SSSIs with such habitat with the singular exception of Crymlyn bog in West Glamorgan & Llanelli AoS. Most significant areas of the habitat have been notified as SSSI, though some small scattered pockets in field corners remain unprotected and vulnerable. The fen at Tre'r Gôf is circa 4000 years old (Botterill 1989) and the palynological record therein, though not a specifically notified feature of this SSSI, cannot be re-created. In view of the likely damage to the SSSI, our advice in terms of the uniqueness of the habitats that may be lost are that the loss of this 10ha example would constitute a net loss of this resource. Although the palynological record cannot be recreated, there is experience in the re-creation of these fen habitats (which are

sometimes associated with anthropogenic templates such as peat and marl diggings), so that the proposal for compensatory habitat creation is credible.

Cae Gwyn SSSI

- 6.5 The Applicant has proposed several mitigation measures in relation to Cae Gwyn, including a hydroecological monitoring and mitigation scheme. However, as detailed in section 3.13 of our Deadline 4 submission, we consider that it may not be possible to fully mitigate air quality effects on the sensitive habitats of Cae Gwyn SSSI. We consider there is potential for residual effects on the designated features.
- 6.6 Cae Gwyn SSSI contrasts ecologically with Tre'r Gof, being chemically mostly “poor fen”. Similar habitat occurs as small pocket mires in rock basins and postglacial kettle-holes but such locations are correspondingly highly susceptible to damage by drainage, infilling, excavation, pollution and abandonment as they are often set within a largely agricultural landscape. The potential damage to Cae Gwyn includes elevated levels of nitrogen inputs. While modelling shows that this may “only” result in the loss of a very low percentage of species, the concern here is that the most sensitive species, notably key species of Sphagnum mosses, critically underpin the structure and function of the mire surface. Loss of these species and replacement by more Nitrogen (N)-tolerant species, including N-tolerant Sphagnum species, is likely to be a long-term change as there is little evidence of mire systems recovering from such disturbance. In view of the possible damage to the SSSI, our advice in terms of the uniqueness of the habitats that may be lost is that there will be a net loss of this habitat in the Area of Search which it is difficult to see being replaced in the foreseeable future.

Cemlyn Bay SSSI

- 6.7 Cemlyn Bay SSSI is selected for several features, including vegetated shingle ridge, saline lagoon, spiral tassel-weed *Ruppia cirrhosa*, and breeding Sandwich, Common and Arctic terns. It is only the terns which are likely to be threatened as a result of this development. Only two other Arctic tern colonies of any significance remain: The Skerries and Ynys Feurig, also within the West Gwynedd AoS. Many other locations were recorded in the past, mostly within the West Gwynedd AoS, but all other significant sites have been lost to development (e.g. Ynys Gorad Goch), recreational pressures (e.g. Ynys Llanddwyn) or predation (e.g. Inland sea). Tern colonies are inherently unstable and liable to change so the absence of available undisturbed alternative sites is a cause for concern. As a result of disturbance attributed to the construction works, we consider that damage to these special features of the SSSI cannot be ruled out. As advised above (paragraphs 3.3-3.4), appropriate compensation measures for the Sandwich, Arctic and Common terns will need to be secured through the DCO.
- 6.8 In view of the possible damage to the SSSI, our advice in terms of the uniqueness of the species that may be lost is that as this is the only Sandwich tern colony in Wales its loss could eliminate the species entirely from Wales. The loss of the Arctic tern colony would reduce available sites in Wales to two and the loss of the Common tern

colony would reduce available significant sites to three (including Shotton on the Welsh border).

7. Water Framework Directive

RESPONSE TO PARAGRAPH 15 OF YOUR LETTER

Mitigation

- 7.1 Section 3 (Annex C) of NRW's Deadline 10 submission [REP10-035] considers all the measures proposed by the Applicant to mitigate adverse impact on the status of the WFD waterbodies. This includes the Skerries coastal water body and the Ynys Môn Secondary groundwater body.
- 7.2 In paragraph 3.5.11 of our Deadline 10 submission, we concluded that we were satisfied that all relevant mitigation measures *could* [emphasis added] be secured by the DCO. This advice was provided on the basis that some of the mitigation measures may be more appropriately secured under a separate consenting regime e.g. Marine Licence.
- 7.3 In addition, as highlighted in section 1 of Annex D of NRW's Deadline 10 submission, NRW had proposed amendments to the DCO Requirement for monitoring and mitigation in relation to Tre'r Gôf and Cae Gwyn SSSIs. This monitoring and mitigation is relevant to the Ynys Môn Secondary groundwater body. The Applicant had confirmed that NRW's amendments would be included in an updated draft DCO submitted at Deadline 9, however an updated draft DCO was not submitted at Deadline 9. NRW advised that these amendments (as shown in paragraph 2.2.3 (Annex B) of NRW's Deadline 9 submission [REP9-037]) should be included at Deadline 10. We can confirm that our proposed amendments to the DCO Requirement have been incorporated by the Applicant in the final draft DCO submitted at Deadline 10 [REP-10-006]
- 7.4 To conclude, we advise that all relevant mitigation, that should be secured through the DCO, has been secured.

RESPONSE TO PARAGRAPH 16 OF YOUR LETTER

Derogation

- 7.5 As detailed in paragraph 7.4.33 (Annex A) of our Deadline 10 submission, we are only advising on the first limb of test c and make no comment as to whether the wider benefits of the development to the environment and to society, outweigh the benefits of achieving the Water Framework Directive objectives.

8. Flooding

RESPONSE TO PARAGRAPH 17 OF YOUR LETTER

Flood risk – Exception test

- 8.1 As explained below, NRW is satisfied that increased flood risk elsewhere can be avoided through measures secured in the DCO.
- 8.2 Regarding the main site, we refer you to our comments provided in section 2.3 (Annex A) at Deadline 7 [REP7-012]. We advised in paragraph 7.1.13 (Annex A) of our Deadline 2 submission that mitigation should be presented to demonstrate that measures can be delivered to mitigate the increased flood risks on Afon Cafnan, Nant Cemaes and Nant Cemlyn. The Applicant provided additional information within Appendix 1-6 of the document titled “*Horizon Deadline 6 Responses to Actions Set at the ISH on 7 – 11 January*” [REP6-010] which provided clarification on how the potentially adverse offsite flood risk impacts identified in the Flood Consequence Assessment [APP-150] would be offset by an on-site surface water drainage scheme.
- 8.3 The preliminary drainage strategy, which informs Appendix 1-6, has made various assumptions about the final drainage design but, as highlighted in paragraph 2.3.4 (Annex A) of our Deadline 7 submission [REP7-012] we accept that it has been shown that a drainage scheme could be delivered on the site which will accommodate the volumes of surface water required to manage potential offsite flood risk impacts.
- 8.4 The final draft DCO includes Requirements (WN1 3(c) and WN12 2(e)) where a detailed drainage design is to be approved by the discharging authority, in consultation with NRW. To conclude with regard to the main site, NRW is satisfied that increased flood risk elsewhere can be avoided through securing these DCO Requirements.
- 8.5 As detailed in paragraph 3.2.14 (Annex A) of our Deadline 5 submission [REP5-081], NRW consider that through implementation of the flood risk mitigation and compensation measures that the works at Section 1 Valley of the A5025 to be compliant with TAN15 (i.e. and would not increase flood risk elsewhere). We refer you to paragraph 8.6 below with regard to Section 2 Llanfachraeth of the A5025.

RESPONSE TO PARAGRAPH 18 OF YOUR LETTER

A5025 Off-line Highways Improvements – TAN15

- 8.6 We have no further comments to add to those provided in paragraph 4.3.4 (Annex A) of our Deadline 7 submission [REP7-012].

9. Ecological Compensation Sites

RESPONSE TO PARAGRAPH 20 OF YOUR LETTER

- 9.1 As detailed on page 20 of its Deadline 10 submission [REP10-013], the Applicant has included the term “*significant*” in the Landscape and Habitat Management Strategy and provides some context for doing so, and for their interpretation in line with the Environmental Assessment methodology for environmental impacts which has been included to consider flood risk.
- 9.2 Our position is that Technical Advice Note 15: Development and Flood Risk specifically advises “*No flooding elsewhere*” (TAN15 Para A1.12). NRW’s guidance (Guidance Note 028: [Modelling for Flood Consequence Assessments](#)) advises that increases in flood depths (due to new development) should report when there is a positive or negative change in flooding depths of 5mm or more (a factor which accounts for mathematical modelling variance). The relevant provisions of the TAN do not refer nor limit impacts to be ‘significant’.
- 9.3 We note that the Applicant’s Deadline 10 submission refers to a measurable increase to highly vulnerable development. Highly vulnerable development types are provided in Figure 2 of TAN15 and include all residential premises. However, the requirement in A1.12 in TAN15 to ensure no flooding elsewhere applies to all development types.

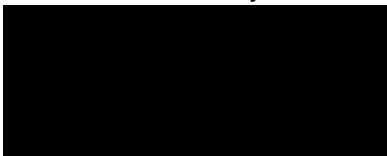
10. Design and Access Statement

RESPONSE TO PARAGRAPH 37 OF YOUR LETTER

- 10.1 In section 2.1 (Annex B) of its Deadline 7 submission [REP7-012], NRW proposed text for inclusion in the design principles of the Design and Access Statement. This was to ensure that the AONB is fully considered in the subsequent detailed design and to mitigate the effects of the development as far as is practicable.
- 10.2 As confirmed in paragraph 2.1.2 (Annex B) of NRW’s Deadline 9 submission, the updated design principles of the Design and Access Statement (Volume 2) submitted at Deadline 8 [REP8-044] has appropriately addressed NRW’s concerns.

Please do not hesitate to contact Bryn Griffiths should you require further advice or information regarding these representations.

Yours sincerely,



Rhian Jardine
Head of Development Planning and Marine Services
Natural Resources Wales