



FAO: Kay Sully  
National Infrastructure Planning  
The Planning Inspectorate  
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BS1 6PN

11 February 2020

Dear Mr Leigh,

**EN010007 Wylfa Newydd Nuclear Power Station**

**Welsh Government (IP Number: 20011597) – Response to request for further comments (letter dated 24 January 2020)**

**1 Introduction**

- 1.1.1 The Welsh Ministers (hereafter referred to as Welsh Government) formally registered on 10 August 2018 as an Interested Party to the Wylfa Newydd Nuclear Power Station Development Consent Order (DCO) Application, submitted by Horizon Nuclear Power (hereafter referred to as Horizon).

**2 Article 86 Marine Enforcement Authority**

- 2.1.1 Welsh Government has liaised further with both Horizon and the Isle of Anglesey County Council (IACC) in respect of draft Article 86 and the revised wording of Article 86 provided in **Appendix A** has been agreed between all such parties.
- 2.1.2 There are two main changes from the previous version which it would be helpful to explain. Firstly, it has been agreed between Welsh Government, IACC and Horizon that Welsh Ministers should be the enforcing authority in respect of the DCO in relation to land and water seaward of mean high water springs (“MHWS”). This is a slight change of approach from the close of examination where it was previously agreed that Welsh Ministers should be the enforcing authority below mean low water springs (“MLWS”), with IACC enforcing the intertidal area between MLWS and MHWS.
- 2.1.3 The agreed approach will provide a more consistent approach to marine enforcement as:
- Natural Resources Wales (NRW) under the DCO will be the discharging authority in respect of DCO requirements below MHWS. NRW is defined in the draft DCO as the “discharging authority” in respect of DCO Requirements relating to “land seaward of MHWS”; and
  - Welsh Ministers will have responsibility and enforcement powers below MHWS in respect of the marine licence. Pursuant to the revised draft of Article 86, Welsh

Ministers will be the enforcing authority in respect of land and water below MHWS. There will consequently be a single enforcing authority for any breaches relating to the marine licence or DCO in relation to the marine environment. The relevant marine enforcement team at Welsh Government has the requisite expertise to perform the role.

- 2.1.4 The second main change to the drafting of Article 86 is to make this more express as to the enforcement powers Welsh Ministers are intended to have. The revised drafting reflects comments made by Welsh Government in previous representations that the drafting could be clarified, for the avoidance of any doubt, to ensure Welsh Ministers shall have all relevant powers of enforcement under Part 8 of the Planning Act 2008, including in relation to land seaward of LMWS. The reason for this is because Part 8 of the Planning Act 2008 focusses on land of the local authority, yet land below LMWS falls outside of the jurisdiction of IACC.
- 2.1.5 Welsh Government have continued to positively engage with Horizon IACC and are pleased to report that the revised wording of Article 86 provided in **Appendix A** has been agreed between all such parties.

### **3 SPC8 - Archaeological written scheme of investigation**

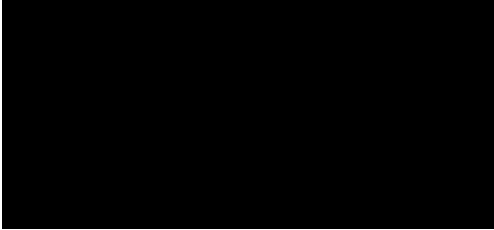
- 3.1.1 As highlighted in Welsh Government's response (dated 20 December 2019), it was acknowledged that Horizon intended to request a revision to SPC8 to include a requirement for an Archaeological Mitigation Scheme (AMS) in respect of Work 12.
- 3.1.2 Following further engagement with Horizon and IACC, the revised wording for requirement SPC8 provided in **Appendix B** has been agreed between all parties. The revised wording is intended to ensure that any archaeological remains on the site will be protected during any site preparation and clearance works to be undertaken pursuant to Work 12.
- 3.1.3 Welsh Government confirms that, in view of the agreed wording of SPC8 and archaeological agreement referred to below, Cadw has no intention to schedule any part of the site as an ancient monument. SPC8 and other DCO requirements will provide adequate controls and protection.

### **4 Archaeological Agreement for Archaeological Works Already Undertaken**

- 4.1.1 As highlighted in Welsh Government's response (dated 20 December 2019), Welsh Government (and Cadw) were keen to ensure that there was a legally binding commitment from Horizon to complete the full programme of post-excavation archaeological works (Stages 1-3 as outlined in Welsh Government's response) in relation to the extensive materials already excavated from the site. The potential research value and public interest was an important consideration in the justification for undertaking such extensive archaeological investigation prior to the determination of the DCO application.
- 4.1.2 Following submissions made by all relevant parties in December 2019, Welsh Government, Cadw, IACC, and Gwynedd Archaeological Planning Service (GAPS) have proactively engaged with Horizon to reach agreed terms in relation to post-excavation archaeological works at Wylfa Newydd.
- 4.1.3 Welsh Government can confirm that a contract relating to the post-excavation archaeological works at Wylfa Newydd is in agreed form between Horizon and IACC and engrossments are being issued for execution. It was agreed that IACC and Horizon are the appropriate parties to this agreement.
- 4.1.4 Welsh Government and Cadw welcome this commitment from Horizon which resolves this outstanding matter in a satisfactory manner.

4.1.5 Welsh Government previously indicated to the Secretary of State that if no such agreement could be reached then it may be necessary to request a DCO requirement to secure completion of post excavation works specifically in relation to materials already excavated. However, Welsh Government wish to confirm that following completion of the archaeological agreement (which is expected imminently) there is no need to request an additional DCO requirement on this issue.

Yours sincerely,



**Andrew Slade**  
Director General  
Economy, Skills and Natural Resources

**Attachments**

***Appendix A – Agreed revised text for Article 86***

***Appendix B – Agreed revised text for requirements SPC8 – Archaeological written scheme of investigation***

## Appendix A

### Article 86 Revised Draft Text Mean High Water Springs (MHWS)

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#### **Marine enforcement authority**

**86.** (1) *For the purposes of enforcement in respect of land and water seaward of mean high water springs, Part 8 of the 2008 Act will be deemed to apply as follows:*

*(a) Welsh Ministers will be the relevant local planning authority in respect of land seaward of mean high water springs for the purposes of Section 173 and Part 8 of the 2008 Act.*

*(b) Welsh Ministers will have all powers under Part 8 of the 2008 Act in respect of land seaward of mean high water springs, including the power to prosecute under section 161 of the 2008 Act.*

*(c) For the purposes of section 235 and Part 8 of the 2008 Act and this article 86, “land” shall include all land and water seaward of mean high water springs, including land and water seaward of mean low water springs and the sea bed*

#### **Article 2(1)**

Definitions to be revised in article 2(1) of the Order for the purposes of the Order:

*“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time, unless otherwise agreed with NRW and Welsh Ministers*

*“land” includes land covered by water (including where relevant all land and water seaward of mean high water springs including the sea bed), any interest in land or right in, to or over land*

## **Appendix B**

### **SPC8 Archaeological written scheme of investigation**

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#### **SPC8 Archaeological mitigation scheme and written scheme of investigation**

*(1) Subject to paragraph (4) no part of Work No. 12 may commence on the WNDA until an archaeological mitigation scheme has been submitted to and approved by IACC in consultation with Cadw.*

*(2) The archaeological mitigation scheme must:*

*(a) Identify those areas of the WNDA on which there are archaeological remains, historic buildings and historic landscapes to the extent such areas have not been excavated ("archaeological areas");*

*(b) Be prepared in general accordance with sections 12 of the Wylfa Newydd CoCP and the Main Power Station Site Sub-CoCP;*

*(c) Identify works comprised in Work No.12 that may damage an archaeological area ("relevant works");*

*(d) Identify measures, processes and controls to be followed in undertaking the relevant works within an archaeological area to avoid such damage when undertaking Work No.12; and*

*(e) require written scheme of investigation(s) to be prepared as appropriate for the identified archaeological areas.*

*(3) Construction of Work No. 12 must be undertaken in accordance with the archaeological mitigation scheme and written scheme of investigation approved under paragraph (1) and (2)(e) and any written scheme of investigation must be fully implemented as approved, unless otherwise approved by IACC in consultation with Cadw.*

*(4) (1) Work No. 12 may commence prior to the approval of the archaeological mitigation scheme referred to in paragraph (1) where the undertaker has submitted to IACC and IACC has approved in consultation with Cadw):*

*(a) a plan of the WNDA identifying areas which are known not be an archaeological area ("excluded areas"); and*

*(b) a statement confirming how commencement on the excluded areas will not adversely impact any archaeological area and detailing the works that may be undertaken on the relevant excluded area(s).*

*(2) No works may be carried out beyond the relevant excluded areas and all works must be in accordance with the statement approved under paragraph 4(1)(b).*