

Wylfa Newydd Project

Horizon's Response to Land and Lakes' Deadline 4 Submission

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1 Horizon's response to Land and Lakes' Deadline 4 Submission

1.1 Introduction

- 1.1.1 The summary of oral case submitted by Land and Lakes at Deadline 4 (17 January 2019) [REP4-036] expands upon the submissions given at the January hearings. Horizon does not intend to respond to every point raised in the Deadline 4 submission (17 January 2019). As Michael Humphries QC, Counsel for Horizon, made very clear at the hearings, the Land and Lakes proposals for temporary workers' accommodation at Cae Glas and Kingsland do not form part of the application before the Examining Authority.
- 1.1.2 Horizon nonetheless wishes to respond to certain points made by Land and Lakes.

1.2 Evidence submitted by Land and Lakes

- 1.2.1 At section 2.1, Land and Lakes refers to the evidence it has submitted to date, and refers to Horizon's responses to this evidence as 'light touch'. As above, the Land and Lakes proposals are not part of the DCO application, and as such Horizon is not intending to submit a detailed rebuttal of the Land and Lakes proposals. Horizon's responses to date, as set out below, are proportionate and focus on those aspects of the Land and Lakes' submissions that relate to the DCO application. Horizon has responded to the evidence submitted by Land and Lakes in the following ways:

- At Deadline 3 (18 December 2018), Horizon's response to Land and Lakes [REP3-036] explained that the approach and justification in relation to the site selection process for Temporary Worker's Accommodation (TWA) is set out in detail in the Site Selection Report Volume 4 - Temporary Workers' Accommodation [APP439]. The Site Selection Report explains how other alternative sites, including Cae Glas and Kingsland, and why these were rejected.
- At Deadline 4 (17 January 2019), Horizon responded to Land and Lakes evidence relating to odour, noise, vibration, and traffic effects [REP4-007 and REP4-008]. These responses set out that:
 - with the proposed mitigation measures in place, there will be no significant effects from odour at the Site Campus and therefore odour will not be a reason to make the Site Campus un-attractive to workers;
 - the proposed location and design standards for the Site Campus are considered acceptable in terms of noise and vibration effects; and
 - the analysis provided by Land and Lakes in the Curtins report [REP2-248] on transport planning matters is inaccurate and flawed. The Land and Lakes proposal would require 2,450 construction workers on the day shift to travel each day to and from the WNDA in a

minimum of 108 bus movements during the day (54 to the WNDA and 54 from the WNDA), plus additional bus movements to transport the night shift workers. The Site Campus proposals in Wylfa Newydd DCO Project remove all these trips from the road network helping to reduce the traffic impact of the Wylfa Newydd DCO Project.

- 1.2.2 Horizon does not accept criticisms regarding quality levelled by Land and Lakes. The accommodation, facilities, and services provided by the Site Campus are appropriate for workers and has specifically been designed for the needs of workers for the Wylfa Newydd DCO
- 1.2.3 In respect of the purported benefits of the Land and Lakes proposals, these are immaterial to the consideration of the DCO application, as the proposals are not part of the application before the Examining Authority.

1.3 Site Campus and decommissioning

- 1.3.1 At paragraph 2.1.6 Land and Lakes states:

'The L&L scheme provides flexibility at both ends of the project; Mr Hodgkiss (Arcadis) has provided a detailed timeframe for delivery which demonstrates that L&L can bring forward more units in a shorter time frame than HNP. Further, L&L provide flexibility towards the end of the TWA lifespan as there is no drop-dead date beyond which the L&L scheme could not be utilised. This is in contrast to the site campus which must be decommissioned prior to reactor 1 being brought into use due to the requirements of the Office for Nuclear Regulation which prohibits residential accommodation within close proximity of a live nuclear reactor.'

- 1.3.2 Horizon does not agree that Land and Lakes would be able to bring forward more units in a shorter timeframe than the Site Campus. Land and Lakes would need a commercial agreement with Horizon in order to commence development of their proposals. Horizon could not come to acceptable commercial terms with Land and Lakes and does not consider the scheme to be financially viable as part of the Wylfa Newydd DCO Project. Even if this was possible, such an agreement could not occur until after overall project financing has been secured. There is no realistic prospect that the Land and Lakes proposals could be brought forward earlier than the Site Campus; rather, the Land and Lakes proposals would cause delay and commercial uncertainty.
- 1.3.3 In any event, Horizon does not consider Land and Lakes proposal is fit for purpose. Amendments to the consents for Kingsland and Cae Glas would be needed, including the likelihood of further applications to provide the necessary facilities, including bus terminals, better amenity provision, a medical centre and amendments to internal road layouts. This would introduce further costs and uncertainty and would delay the construction of TWA and further threaten the viability of the Wylfa Newydd DCO Project, which is contrary to the urgent need identified in NPS EN-1 and EN-6.
- 1.3.4 Land and Lakes also claims in paragraph 2.1.6 that Horizon's Site Campus must be decommissioned prior to reactor 1 being brought into use due to the

requirements of the Office for Nuclear Regulation (ONR). This is incorrect and is a misinterpretation of ONR's statements. ONR has not said that Horizon need to decommission the Site Campus after Unit 1 completion. Rather, ONR are referring to the decommissioning of the TWA prior to the operational phase of the Wylfa Newydd Power Station i.e. prior to the commissioning of Unit 2. ONR consider that the siting criteria will be met as the re-purposing the Site Campus for residential use after completion of construction works is specifically excluded.

- 1.3.5 As per ONR's response to the Examining Authority's First Written Questions [REP2-354], *'in relation to the siting of nuclear installations adjacent to existing populations and residential developments etc., the UK Government policy is to make use of the "semi-urban" demographics criterion as the limiting values for the siting of modern reactors such as the UKABWR units proposed to be installed and operated at the Wylfa Newydd site.'* ONR's demographics assessment has concluded that the Wylfa Newydd site meets the "semi-urban" criterion.
- 1.3.6 The Site Campus is inherently a temporary form of development, as it is only required to house construction workers. Temporarily occupied buildings have not been included in ONR's demographics assessment. It should also be noted that ONR does not object to the grant of a DCO for Wylfa Newydd based on demographics considerations based on the existing text in the draft DCO.
- 1.3.7 The issue ONR has raised is that they want to ensure that the Site Campus will not be re-purposed in the future to some other purpose that does not fit in with ONR's siting criteria. Therefore, this can be resolved through a clear commitment to decommission the facility once the Power Station is operational. Horizon has committed that the Site Campus will be removed following construction and in accordance with a Decommissioning Scheme (as outlined in Requirement WN29). WN29 states that the Decommissioning Scheme must be submitted to IACC for approval no later than six months prior to the anticipated Unit 2 Commissioning Date.
- 1.3.8 Therefore, Horizon understand that there are no outstanding issues and await final confirmation from ONR.

1.4 Consideration of alternatives

- 1.4.1 Horizon has considered Land and Lakes' proposals at length, and indeed consulted on the proposals at Pre-Application Consultation Stage 2, as noted at 2.1.13 of Land and Lakes submission. However ultimately Horizon rejected the proposals in favour of the Site Campus for a range of reasons as set out in the Site Selection Report and repeated in Horizon's Deadline 3 (18 December 2018) response.
- 1.4.2 Overall, it was found that locating the Temporary Workers Accommodation on a single site as close as possible to the Power Station Site would minimise impacts upon the local highway network and the amenity/culture of local communities, while reducing the costs of the Wylfa Newydd DCO Project significantly.

- 1.4.3 In any event, Horizon could not come to acceptable commercial terms with Land and Lakes. Commercial factors and financial viability of the scheme are wholly legitimate concerns with an overarching objective to ensure the Wylfa Newydd DCO Project is implemented in the most efficient manner.
- 1.4.4 As Land and Lakes notes, the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 at Schedule 4, paragraph 18 require an applicant to submit "*An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects*". Horizon has provided this information in Chapter D2 of the Environmental Statement: WNDA Development - Alternatives and design evolution [APP-121]. This chapter sets out 'an outline of the main alternatives studied' (including Kingsland and Cae Glas), and provides 'an indication of the main reasons for the applicant's choice, taking into account the environmental effects'. This requirement is straightforward and has clearly been met by the DCO application. There is no requirement that Horizon must select an alternative that another party thinks is better.
- 1.4.5 At 2.1.14, Land and Lakes cites *R (Langley Park School for Girls) v Bromley LBC [2009]* EWCA Civ 734. Horizon disagrees with Land and Lakes' analysis and has submitted a separate note at Deadline 5 (12 February 2019) on the relevance of the judgment in *R (Langley Park School for Girls) v Bromley LBC [2009]* EWCA Civ 734 to the Wylfa Newydd DCO Project, as requested by the Examining Authority. In summary, the judgment in *Langley* is not directly applicable to the Wylfa Newydd DCO Project, and is of limited relevance to the Examining Authority's consideration of the DCO application. NPS EN-1 sets clear requirement framework for the consideration of alternatives in respect of application for an order granting development consent for an Energy NSIP. The DCO application for the Wylfa Newydd DCO Project is compliant with these policies.

1.5 Modifying a DCO post-application

- 1.5.1 Land and Lakes makes various submissions regarding the ability to modify a DCO post-application from 4.8 to 4.13.
- 1.5.2 Horizon agrees that Section 114 enables the Secretary of State to modify a DCO post-application. However, such discretion is not unlimited, and is subject to legal challenge if improperly used.
- 1.5.3 The letter from Bob Neill MP, cited by Land and Lakes, sets out the Government's understanding of the scope of s.114 of the Planning Act 2008. Mr Neill MP states that "[where] proposed changes to an application post submission are such that the effectively constitute a new application, they should not be accepted."
- 1.5.4 Mr Neill MP goes on to state that "*If the Examining Authority decides to consider material changes to an application as part of the examination, the Examining Authority need to act reasonably, and in accordance with the principles of natural justice. In particular the principles arising from the Wheatcroft case must be fully addressed, which essentially require that anyone affected by amended proposals must have a fair opportunity to have their views heard and properly taken into account regarding them.*"

- 1.5.5 A modification to include the proposals put forward by Land and Lakes, which would displace 3500 workers from the Site Campus to an alternative accommodation location, fails to meet these requirements as such a modification has not been consulted on or assessed in the Environmental Statement, and is so fundamental that it would constitute a new application.
- 1.5.6 In terms of consultation, when Horizon consulted on the proposed scheme at Pre-Application Consultation Stage 3, this did not include the Land and Lakes proposals. When the DCO application was submitted, it did not include the Land and Lakes proposals. In both instances, parties who may have been interested in DCO application had they known that the Land and Lakes proposals would form part of it (or that 3500 workers would be displaced to an as yet unconfirmed alternative location) have not been given the opportunity to have their views heard. The consultation on the Land and Lakes TCPA application is not sufficient, as the consultation was not made in a context where the final scheme of the Wylfa Newydd DCO Project was known. The scheme as a whole, with such a modification in place, has not been consulted on.
- 1.5.7 Similarly, there is no assessment of effects that has considered the application as a whole and this is, in turn, required to be adequate in order for consultation to be properly carried out. Again, the assessment undertaken for the Land and Lakes TCPA application is not sufficient, as those assessments were not made in a context where the final scheme of the Wylfa Newydd DCO Project was known. Key issues such as the timing and phasing of the delivery of the Land and Lakes proposals (which would be outside of Horizon's control) and how this fits in with other construction effects have not been assessed as part of the overall scheme. Also, as noted above, the traffic assessment put forward by Land and Lakes at Deadline 2 (4 December 2018) is flawed and traffic and transport effects have therefore not been adequately assessed. There may be new and different significant effects from the modified scheme, and these have not been assessed.
- 1.5.8 Furthermore, the change proposed, through displacing 3500 workers, would be a major amendment to the scheme. This would effectively constitute a new application.
- 1.5.9 There is a mechanism through which material changes can be introduced into the Examination, as set out in Planning Inspectorate Advice Note 16. Horizon has not made any such application for a material change, and even if such a change was requested at this stage of the examination, it would almost certainly be rejected by the Examining Authority (even if proper assessment and consultation could be carried out).
- 1.5.10 It is notable that the Department for Communities and Local Government Planning Act 2008: Guidance for the examination of applications for development consent states at paragraph 111 that "*It is important for all parties to remember that it is for the applicant to decide whether or not to propose a change to a proposal during the examination. Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the pre-application period and also in their written representations.*"

1.6 Grampian condition proposed by Land and Lakes

1.6.1 Land and Lakes proposes that a Grampian condition is imposed on Horizon, requiring Horizon to submit a scheme to the local planning authority demonstrating how it is proposed to accommodate 3500 workers (with only 500 being allowed at the Site Campus). Land and Lakes seems to attempt to characterise this as different from a material change because it is 'negative' in nature. However, a Grampian condition of this sort, by making a major and fundamental alteration to the scheme proposed, must therefore be subject to the same requirements as a modification to the DCO. Such a modification would be unlawful for the same reasons set out above.

1.6.2 Further, it is well established that Grampian conditions should not be imposed if there is no reasonable prospect of the required action being performed within the time limit imposed by the permission.¹ There is no commercial agreement between Horizon and Land and Lakes, and such a condition would introduce considerable commercial uncertainty. This would place Horizon in a ransom scenario, being forced to reach a commercial arrangement with Land and Lakes without any bargaining power. Even if an alternative TWA option could be found within the time required, this would similarly be under ransom conditions, where every landowner would know that the future of the Project rests on commercial terms being struck. Horizon would have no compulsory purchase powers available in respect of any alternative proposal, which might otherwise allow it to avoid a ransom scenario. This would be commercially unacceptable, and would be counter to the policies in NPS EN-1 and EN-6 by seriously threatening the viability of the Wylfa Newydd DCO Project.

1.6.3 The examples cited by Land and Lakes of supposed Grampian conditions in previous DCOs are clearly of a much different nature and do not provide a precedent to a modification of the sort being requested. The statement cited at 4.16 from the Wrexham Energy DCO decision regarding other consents and licences relates to matters regulated by other regimes, rather than being a Grampian condition. The combined heat and power (CHP) study noted in respect of the Wrexham Energy DCO at 4.16 arose as a matter of NPS compliance. As noted in the Secretary of State's decision at 4.9. "*EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP.*" The provision cited from the Hirwaun Generating Station Order 2015 at 4.19 resulted from a decision from the Secretary of State that the electrical and gas connections, as associated development (in Wales, prior to the passing of the Wales Act 2017), could not form part of the Order. The provision cited at 4.20 from the Hinkley Point C DCO in relation to playing fields is a common, small-scale Grampian condition that does not fundamentally alter the proposed scheme. None of these examples is remotely comparable.

1.6.4 Furthermore, to be fit for purpose, amendments to the consents for Kingsland and Cae Glas would be needed, including the likelihood of further applications

¹ See, for example, planning guidance published by the Welsh Government in (2014) Circular WGC 016/2014, Welsh Government, October 2014.

to provide the necessary facilities, including bus terminals, better amenity provision, a medical centre and amendments to internal road layouts. This would introduce further costs and uncertainty.

1.6.5 Overall, if such a condition was imposed, this would not be commercially acceptable to Horizon for a range of reasons as set out above. Such a condition would be counter to the policies in NPS EN-1 and EN-6 as it would severely threaten the viability of the Wylfa Newydd DCO Project.

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