IN THE MATTER OF:

LAND AND LAKES LIMITED

-and-

WYLFA B POWER STATION

-and-

PROPOSED GRAMPIAN CONDITION

ADVICE

1. I am asked to advise Land and Lakes Ltd ("L&L") as to the legality and acceptability in policy terms of a proposed Grampian-style condition which would be included within the proposed Development Consent Order for the Wylfa B nuclear power station.

2. The background to this matter can be shortly stated:

    a. The application for a DCO is currently at Examination.

    b. In early rounds of consultation, it had been envisaged that a considerable number of the temporary workers required for the construction of the site would be accommodated off-site and the two sites for which L&L had gained planning permission were preferred.

    c. However, in a third and final round of consultation the promoter completely changed its approach and the draft DCO as applied for proposed an onsite

"Campus" which would accommodate all of the temporary workers who would previously have been accommodated in the offsite campus solution.

d. During the Examination, some concerns have been expressed, not least by the Examining Authority ("ExA"), about the acceptability of the Campus. Indeed, the ExA at the relevant ISH suggested a consideration of a revised Campus to accommodate no more than 500 workers.

e. In response to these developments, those instructing me propose that the DCO be amended so as to include a Grampian style condition so as to prevent development until a scheme had been submitted to the LPA providing a solution to the issue of temporary worker accommodation. This was the position which they previously put forward at the Examination and as set out in their Deadline 4 Submissions [REP4 - 036].

f. The promoters of the DCO have objected to that suggestion, contending that such a condition would be unlawful and/or contrary to policy, for the following reasons:

    i. Such a modification is so fundamental that it would constitute a new scheme;

    ii. The scheme as a whole, with such a modification in place, has not been consulted on;

iii. There is no assessment of effects that has considered the modified scheme as a whole. There may be new and significant different effects from the modified scheme, and these have not been assessed or consulted on.; and

iv. Solutions to the TWA issue which do not involve substantial on-site provision at the Campus (including schemes which involve the use of the L & L sites) would threaten the viability of the DCO scheme as a whole.

3. Accordingly, I am asked to advise as to the lawfulness and appropriateness of such a condition.

4. In my view, there can be no real doubt as to the legality of the condition. It is well-settled law that Grampian style conditions are lawful; indeed they are an entirely common feature of planning permissions. As noted above, those instructing me included within their DL4 submissions a series of DCOs and DCO decision letters which included Grampian-style conditions.

5. Equally, there can be little doubt that an amendment of the DCO to include such a condition would of itself be *lawful*. Section 114 (2) of the Planning Act 2008 clearly permits (by way of granting a power to make Regulations governing the procedure) the material amendment of a DCO. In the absence of such regulations it is considered that the general power to either make or decline to make a DCO encompasses the power to make a DCO in modified form.

6. It is to be noted that the promoters themselves, at paragraph 1.5.2 of their Response to the Deadline 4 Submission made by those instructing me, accept that the Secretary of State is able to modify the DCO post application [REP5-048].

7. Guidance as to the appropriateness of making amendments to a DCO application after its submission is contained within a Ministerial Letter of 28 November 2011. This stated, so far as material as follows:

"*I agree that where the Examining Authority determines the proposed changes to an application post submission are such that they effectively constitute a new application, they should not be accepted….*

… it is important that the major infrastructure regime allows material changes to be made post application in certain circumstances.

The Examining Authority will 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.
… The Examining Authority will be in a better position to determine what is appropriate on a case-by-case basis. Depending on the circumstances… the Examining Authority may need to:

- *take into account what publicity (if any) the motor has carried out to ensure people who are not interested parties have an opportunity to make representations*
- *use the general power to control the Examination of an application… to make changes to the timetable to allow for representations to be made regarding any such amendments*

- *… exercise its discretion… to permit representations to be made by people who are not interested parties in cases where it is appropriate to do so*."

8. In assessing the application of these principles to the present case, it is fundamentally important to have regard to the nature of the amendment proposed. The *Grampian* condition does not specify the eventual solution to the TWA issue. Instead, in recognition no doubt of the identified difficulties with the Campus scheme, the *Grampian* condition merely requires that the overall scheme does not proceed until an acceptable solution to the TWA issue has been found.

9. That simple reality in my view deals with the issues concerning consultation raised by the promoters in their objection to the proposed condition. As a preliminary matter, given the overall size and potential environmental impact of the project as a whole, I am wholly unconvinced by the suggestion that a decision to leave the issue of the location of TWA to later determination could be regarded as a change of such a fundamental nature as to render the application a new application for a different project.

10. With respect to the issues of consultation, the application to the LPA required by the condition would itself be subject to consultation. That consultation would necessarily encompass the full range of issues which anyone might wish to raise before the ExA at this stage. The question which arises is whether there is any matter which might fall to be considered by the ExA which could not be adequately raised before the LPA in consideration of the scheme required by the Grampian condition. Although this is ultimately a matter for the ExA, I cannot identify any such issue and I note that the

promoters, whilst making generalised assertions, have not as yet identified any specific issue of this sort. In addition, it is clear from the Ministerial letter that the ExA has a range of powers available to allow for further consultation should that be thought necessary.

11. The final suggestion from the promoters is that planning policy (see paragraph 3.47 of Circular WGC 016/2014) states that a Grampian condition should not be imposed if there is no realistic prospect that the condition could be complied with. This is because, the promoter contends, the provision of TWA off-site would threaten the viability of the DCO scheme. However, the promoter has not put forward any evidence to substantiate this. In any event, more fundamental concerns regarding viability and funding have resulted from the promoter's suspended status.

12. Again, this is ultimately a decision for the ExA but it is to be noted that the test of "no realistic prospect" is a high one for the promoters to overcome. I am not aware of any substantial evidence which supports the promoters' contention on this matter.

13. In conclusion, I am satisfied on the basis of the material before me that the imposition of a Grampian condition imposing a cap of 500 bed spaces on the Campus and requiring a separate scheme for worker accommodation to be submitted to the LPA for approval would be lawful. It would not appear to constitute a fundamental modification to the DCO scheme. The issue of whether it is in accordance with policy and whether consultation requirements can be satisfied is a matter for the judgment of the ExA but it is of fundamental importance to note that the very nature of the Grampian is such that the scheme to be brought forward when the Grampian is discharged will be subject to full consultation of itself; I have seen nothing to suggest

that that simple fact does not deal with all the issues of consultation. Accordingly, there would appear to be no reason why such a condition would not be appropriate in this DCO.

14. I will happily advise on any further matter arising.

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