

**Erratum; Addendum;
REP7-001 dDCO Work No. 1D devolved jurisdiction**

EN010007 ExA Deadline 8 Comment

Application by Horizon Nuclear Power Limited for an Order Granting Development
Consent for the Wylfa Newydd Nuclear Power Station

Summary

8.1 Equality of arms: capacity and resource constraint

8.2 Erratum: Deadline 7 Comment REP7-036

8.3 Addendum: Deadline 7 Comment REP7-036

8.4 REP7-001: Applicant's Post Oral Hearing Summaries (APOHS) March 2019

8.4.1 REP7-001 APOHS Tuesday 5th March 2019, page 24, Item 8(b): dismantlement or down-scaling of Horizon Nuclear Power Limited?

8.4.2 REP7-001 APOHS Thursday 7th March 2019, page 382, "Other matters Work No. 1D": devolved jurisdiction and Buildings 9-201 and 9-202 for interim storage of higher activity radioactive waste, on-site on WNDA for up to 140-160 years

8.4.2.1 Buildings 9-201 and 9-202: notable aspects and characteristics

8.4.2.2 Buildings 9-201 and 9-202: likely planning status jurisdiction issues

8.4.2.3 The Applicant's response in REP7-001

8.4.2.4 Buildings 9-201 and 9-202: part of the NSIP?

8.4.2.5 Buildings 9-201 and 9-202: associated development?

8.4.2.6 REP5-003 dDCO: deletion of Work No. 1D Buildings 9-201 and 9-202 – devolved jurisdiction

8.1 Equality of arms: capacity and resource constraint

- 8.1.1 Inadequate resource capacity as lay Interested Party continues to hamper,
- a. timeous appraisal of all 109 new AS documents, alongside 38 Deadline 7 submissions from other Interested Parties, including statutory consultees; as well as,
 - b. consideration of a range of environmental matters, likely significant effects, mitigation options and proposed compensation measures.

8.2 Erratum: Deadline 7 Comment REP7-036

- 8.2.1 The ExA's attention is respectfully drawn to the following proofing error, with apology.

In footnote 4 on page 6: please delete "the UK", after the words "Upon Leaving", in the line immediately above sub-paragraph "a."

8.3 Addendum: Deadline 7 Comment REP7-036

- 8.3.1 Please insert a following new sentence at the end of para.7.5.3.1.f:

"REP2-305 paras 2.2.4.1-2, and REP6-053 para.6.7.5.1, are relevant in this regard."

8.4 REP7-001: Applicant's Post Oral Hearing Summaries (APOHS) March 2019

8.4.1 REP7-001 APOHS Tuesday 5th March 2019, page 24, Item 8(b): dismantlement or down-scaling of Horizon Nuclear Power Limited?

- 8.4.1.1 An inconsistency appears to arise between an Oral Submission by the Applicant's Advocate to the ISH on 5 March 2019, and Oral Evidence by the Applicant's Executive Director of Nuclear Operations to the House of Commons Welsh Affairs Committee on 12 February 2019.

According to the written summary under Item 8(b), in REP7-001, the Applicant's Advocate apparently stressed that Horizon was merely "down-scaling", following Hitachi's decision on 17 January 2019 to suspend further work on the Wylfa Newydd DCO Project: REP4-035 footnote 19 to para.4.5.5.3, referring.

On the other hand, according to the Applicant's Executive Director, "the Horizon company will be dismantled over the coming weeks. ... Hitachi-Horizon will not exist as it does today."¹

- a. Which statement is the ExA able to accept as authoritative and material? Alternatively, has the Applicant been requested to reconcile these statements, for avoidance of doubt?
- b. Should it transpire that the Applicant's responses to SWQ2.16.1, SWQ2.4.56 (1) and (2), and SWQ2.4.58 (all in REP5-002) were prepared before the Executive Director's

¹ WAC (2019) Welsh Affairs Committee Oral evidence: Wylfa Newydd nuclear power station, HC 1938 Tuesday 12 February 2019 Ordered by the House of Commons to be published on 12 February 2019. Full transcript available at: <file:///E:/silo/energy/wylfa/wb-proposal/wn%20inquiry%20transcript%2096520%20hc1938%20wac120219.pdf>

Reply to Question 31:

"... the Horizon company will be dismantled over the coming weeks. We are in a staff consultation period, which ends in early March. After that point, the intention is that most staff will be served notice. Therefore, the Hitachi-Horizon vehicle does not exist in the construct going forward. I think that is an important point. Moving forward, the developer-led piece may need examination, as I mentioned earlier, but Hitachi-Horizon will not exist as it does today."

statement to the Welsh Affairs Committee became public, are there any implications for the Applicant's respective submissions in REP5-002?

8.4.2 REP7-001 APOHS Thursday 7th March 2019, page 382, "Other matters Work No. 1D": devolved jurisdiction and Buildings 9-201 and 9-202 for interim storage of higher activity radioactive waste, on-site on WNDA for up to 140-160 years

8.4.2.1 Buildings 9-201 and 9-202: notable aspects and characteristics

- 8.4.2.1.1 The Applicant's proposed Buildings 9-201 and 9-202 (REP5-013: WN0902-HZDCO-MSP-DRG-00003 Power Station Site Layout Plan) are located close together on Platform 1D, in the south west corner of the WNDA, at a distance of some 825 meters from the Anglesey Terns Special Protection Area at Cemlyn Bay. Situated adjacent to Mound D (peak +30m AOD), the Buildings are overshadowed as well by the western Mound E (peak +38m AOD): REP5-013, WNDA Reference Point 5 Operation, referring.
- 8.4.2.1.2 Platform 1D (+21m AOD) is clearly isolated and fenced off from the main Power Station Platform (+18 AOD), setting it at least +3m higher in ground elevation than the latter (REP5-013: Power Station Site, Site Layout Plan; WNDA Reference Point 4 Construction; as well as APP-120 Table D1-2, referring).
- 8.4.2.1.3 Buildings 9-201 and 9-202 are both ground surface installations. The Buildings have no involvement with safety critical functions or routine operations of the proposed twin nuclear reactors at Wylfa Newydd. Both Buildings are intended expressly for interim storage of higher activity radioactive waste (HAW). According to the Nuclear Decommissioning Authority², interim waste storage is:
- "an essential component of the HAW management lifecycle and provides a safe, secure environment for waste packages awaiting final disposal."
- 8.4.2.1.4 Buildings 9-201 and 9-202 are notable for a number of inherently distinctive characteristics, distinguishing them markedly and materially from all other structures on the WNDA, including the other four radioactive waste handling facilities. These characteristics mark out the twin Buildings 9-201 and 9-202 as essential components of a defined route map to eventual future permanent disposal of higher activity radioactive waste. To reiterate REP5-083 para.5.5.3.5.4, these are the only proposed installations on the WNDA that would,
- a. not be decommissioned, dismantled and removed altogether concurrently with the decommissioning, dismantlement and removal of all structures on the WNDA, following permanent cessation of electricity generation by the proposed Wylfa Newydd DCO Nuclear Generating Station after 60 years of operation;
 - b. have an operating design life span each that is wholly independent of the operational life span of all other structures on the WNDA. In effect, their individual life spans could be up to two and a half times longer than the operating life span of the proposed Wylfa Newydd DCO Nuclear Generating Station; and,
 - c. would be design engineered primarily to provide and function as way stations for eventual permanent geological disposal of their radioactive waste inventories. As Interim Storage Facilities, Buildings 9-201 and 9-202 are absolutely necessary and essential for implementation of two principal policy objectives under the Government's policy on Managing Radioactive Waste Safely (MRWS White Paper citation in REP2-305 para.2.4.1.4.b, referring). Namely,

² Section 5. Interim Storage, in: NDA (2017: 4) The Importance of Interim Storage in the Management of Higher Activity Radioactive Waste. Nuclear Decommissioning Authority, February 2017. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/595478/The_importance_of_interim_storage_in_the_management_of_Higher_Activity_Radioactive_Waste.pdf

- (i) primary function: ensuring assured and extendable safe and secure surface based containment of all higher activity radioactive waste for as long as necessary (MRWS incorporation in para.B.4.5 of Annex B in NPS EN-6 Volume 2). These facilities are designed for managing the storage of packaged radioactive waste, not the handling of unpackaged radioactive waste (APP-233: Management strategy in Tables 5-3, 5-4 and 5-5, respectively); and,
- (ii) primary purpose: bridging a time gap (dubbed interim storage period) between reception of higher activity radioactive waste from the other radioactive waste handling facilities at the proposed Wylfa Newydd DCO Nuclear Generating Station, and the eventual removal and despatch of the stored waste to permanent disposal in a suitable GDF elsewhere at some future date (MRWS incorporation in para.B.4.1 of Annex B in NPS EN-6 Volume 2).

8.4.2.2 Buildings 9-201 and 9-202: likely planning status jurisdiction issues

- 8.4.2.2.1 Buildings 9-201 and 9-202 comprise dDCO Work No. 1D: REP5-003. Planning issues arising in this instance under para.B.5.1 of Annex B in NPS EN-6 could be said to bear on the development planning status of the proposed twin Buildings earmarked for interim storage of higher activity radioactive waste. Namely, are these Buildings properly classifiable,
 - a. either as integral (or, essential) part of the proposed NSIP Nuclear Generating Station, under section 14 of the PA2008 (as applying in Wales); or
 - b. associated development for the proposed NSIP, under section 115 of the PA2008; or,
 - c. as constituting large primary standalone non-NSIP non-associated development proposal in their own right, and therefore subject by default to development consent determination under relevant provisions of the TCPA 1990 (as devolved to Wales)?
- 8.4.2.2.2 The same three categories are identifiable in para.12 of the April 2013 Updated DCLG "Guidance on associated development applications for major infrastructure projects" under the PA 2008.

8.4.2.3 The Applicant's response in REP7-001

- 8.4.2.3.1 The Applicant's response under "Other matters" in REP7-001, to Action Point 21 from the ExA's ISH Hearing on 5 March 2019 ([OD-.....](#)), reasonably fails to be examined for extent of discharge of burden of proof regarding the Applicant's preference on planning status of Buildings 9-201 and 9-202.
- 8.4.2.3.2 On the face of it, the Applicant's apparent position in REP7-001 continues to remain unclear. At best, the response consists of conclusion statements. The response does not reveal the basis of how and why those conclusions were reached. The response may also be deficient in proper justification. The Applicant seemingly conveys confusion on the planning status of Buildings 9-201 and 9-202, by proposing these installations under both sections 14 and 115 of the PA2008.
- 8.4.2.3.3 Further, while referring yet again to EN-6 para.2.11.5, the Applicant remains shy of addressing the implied thrust of EN-6 Annex B paras B.4.4 and B.4.5, as well as the third bullet point under para.12 of the DCLG Guidance.

8.4.2.4 Buildings 9-201 and 9-202: part of the NSIP?

- 8.4.2.4.1 The Applicant's Advocate advances five bullet points in support of a re-stated primary proposition that these twin Buildings are "essential aspects of" and "therefore part of the NSIP". As discussed below, it remains questionable whether the assertions amount to intelligible or substantive defence of the proposition.

8.4.2.4.2 In the first bullet point, the Applicant's Advocate insists on re-stating a concluding proposition:

"The spent fuel storage facility and the intermediate level waste storage facility are essential aspects of the Wylfa Newydd Power Station and are therefore part of the NSIP."

However, the assertion sheds no further intelligible light on how and why the Applicant has come to that conclusion. No clear basis or justification is discernible. With respect, mere insistence is not sufficient of itself.

The specific observations pooled in REP5-083 paras 5.5.2.1-5.5.2.5, inclusive, remain un-faulted.

8.4.2.4.3 In the second bullet point, the Applicant's Advocate asserts a conclusion:

"Neither structure requires a separate designation as a NSIP under section 14 of the Planning Act"

The Advocate would appear to assume automaticity, providing neither basis, explanation nor justification for reaching that conclusion.

- a. The Advocate's conclusion may be seen to be faulted by existence of separate designation in section 14(1)(p) in respect of: "the construction or alteration of a hazardous waste facility."
 - (i) Does express designation of hazardous waste facilities under section 14 of the PA2008 not suffice to render the Advocate's conclusion unarguable? Section 14 plainly does not include corresponding express designation in respect of the construction or alteration of very long duration (interim period) facilities for the storage of higher activity radioactive waste.
 - (ii) Does express provision for one category of highly dangerous waste under section 14(1)(p) not militate against implying inclusion of Buildings 9-201 and 9-202 for a different category of highly dangerous waste under section 14(1)(a)?
- b. Further, it is apparent from the first sentence in para.B.4.1 in Annex B of the 2011 NPS EN-6 Volume 2 that interim storage is an essential operational and functional component of the Government's separate policy on Managing Radioactive Waste Safely. That policy is summarised in para.B.1.3 in the same Annex. See as well the authoritative position of the National Decommissioning Authority in para.8.4.2.1.3, above.
 - (i) In other words, Buildings 9-201 and 9-202 constitute essential components of a defined route map to eventual future permanent disposal of higher activity radioactive waste. These Buildings could not arguably, functionally or properly be held to constitute an essential operational or functional part of a Nuclear Generating Station.
 - (ii) While the 2011 NPS EN-6 is the Government's standalone policy on permitting energy companies the option of building new nuclear power stations in England and Wales (para.1.1.1 in EN-6 Volume 1, referring), the MRWS is the Government's separate standalone policy on back end management of radioactive waste produced by those power stations. It is the latter policy that governs requirement for Buildings 9-201 and 9-202. The former, rightly and properly, contextually references the MRWS policy. REP2-305 paras 2.4.1.2-2.4.1.5, inclusive, refer as well.
- c. The observations in REP4-035 para.4.9.2.3.5 and REP6-053 para.6.7.9.1, respectively, remain un-faulted.

8.4.2.4.4 In the third bullet point, the Applicant's Advocate asserts:

‘NPS EN-6 at para 2.11.5 envisages that such facilities could “either form part of the development of the NSIP or constitute ‘associated development’”’

With respect, the Advocate may be misconstruing the operation of para.2.11.5, and in doing so may be assuming automaticity on planning status of Buildings 9-201 and 9-202.

- a. To begin with, the entire paragraph is directed at the ExA on how it may Examine any proposals for waste management facilities. Further, the paragraph expressly raises three tests which an Applicant would be obliged to prove *a priori*. Namely, do the proposals,
 - (i) form part of the development of the NSIP; or,
 - (ii) do they constitute “associated development”; and,
 - (iii) are reasonable alternative facilities or arrangements available or may potentially become available?
- b. In addition, in the case of associated developments, an Applicant is also obliged under relevant DCLG Guidance to prove a second tier of tests comprising specified core principles, as well as consideration of whether any proposed waste management facility “in its own right constitute a project”.
- c. Furthermore, the operation of para.2.11.5 is qualified by para.B.4.4 in Annex B of EN-6 Volume 2: REP4-035 para.4.9.2.3.5.a and REP5-083 para.5.5.3.5.6.a, referring, for example.
- d. The Advocate’s response self evidently fails to provide clear evidence and justification on how and why all express and implied tests under para.2.11.5 are claimed satisfied: REP5-083 para.5.5.4.2, referring, for example.
- e. The observations in REP5 paras 5.5.2.5 and 5.5.3.5.12, respectively, remain un-faulted.

8.4.2.4.5 In the fourth bullet point, the Applicant’s Advocate asserts:

“The Strategic Siting Assessment undertaken for NPS EN-6 clearly envisages these facilities as part of the NPS designated site. The SSA included criteria ‘D9: Size of site to accommodate operation, ...’”

- a. In the first instance, might the Advocate be misreading the relevance of SSA Criteria D9? Is the SSA, and indeed Criteria D9, not neutral on planning status of Buildings 9-201 and 9-202?
- b. In the second instance, the fact that a nominated site meets the “size” criteria sufficiently for inclusion in the 2011 NPS EN-6 as a designated site for nuclear new build, has precious little to do with planning determination of whether Buildings 9-201 and 9-202 on the WNDA constitute “essential aspects of the Wylfa Newydd Power Station and are therefore part of the NSIP.” The Advocate’s point *prima facie* would not appear arguable. For the avoidance of doubt, it might help to recall the purpose of the SSA Criteria D9. In nutshell, in order to assure adequate potential for putting in place effective “defence-in-depth” security arrangements necessary for a nominated nuclear power station site, an area of land between 30 and 50 hectares in size is considered adequate for the operation of a permanent site of a single nuclear power unit allowing for operation, maintenance, storage of spent fuel and intermediate level waste³.
- c. Furthermore, the relevant question is whether Buildings 9-201 and 9-202 are part of a designated NSIP or constitute associated development, and not whether these installations are located on an SSA Criteria D9 site. The WNDA site designation in the 2011 NPS EN-6 does not go to proving how and why Buildings 9-201 and 9-202 warrant development consent determination under the PA2008. Beside, an NPS designated site is not by itself an NSIP under the PA2008.

³ The SSA criteria and how sites are assessed: as summarised in the 2011 NPS EN-6 Volume 2, pages 277-279.

- d. Moreover, the Advocate appears to overlook guidance to the ExA in EN-6 para.2.11.5. Namely,

“Annex B sets out that other facilities for the interim storage of waste may come forward. However, in the absence of any proposal the IPC should expect that waste would be on site until the availability of a GDF.”

In other words, even where an NPS site is large enough to accommodate interim radioactive waste storage facilities under SSA Criteria D9, it is neither mandatory nor automatic that such facilities either must necessarily be built on the site or, if proposed, that they unquestionably constitute “essential aspects of the Wylfa Newydd Power Station and are therefore part of the NSIP.” It is for the Applicant to present into Examination specific evidence on all reasonable alternatives considered and reason for dismissing any option: applying para.2.11.5 and Annex B para.B.4.4 in the 2011 NPS EN-6 volume 2. For example, have other facilities or arrangements for interim storage of waste been explored in good faith? Has the Applicant considered what alternative facilities could or might become available within the time horizon of need?

- e. As plain from the summary description⁴, there is nothing in SSA Criteria D9 that appears relevant to determining or confirming whether Buildings 9-201 and 9-202 constitute “essential aspects of the Wylfa Newydd Power Station and are therefore part of the NSIP.” It is not readily explicable how and why the Advocate was minded to conclude otherwise.
 - f. Contextually, all that the SSA Criteria D9 can reasonably be said to establish is that an NPS designated site could be expected to possess an area of land sufficient in size to accommodate interim waste storage facilities if need be. Criteria D9 could not be held to prefigure the planning status of those facilities.

- 8.4.2.4.6 In the fifth bullet point, the Applicant's Advocate cites Hinkley C as a precedent. With respect, the Advocate inexplicably ignores precedents to the contrary, without advancing explanation or justification. For example,

- a. the sole existing interim storage facility for intermediate level radioactive waste in Wales is located on the site of the now defunct Magnox Nuclear Power Station at Trawsfynydd (in Gwynedd). This was consented as a TCPA1990 development, under a joint decision of Welsh Ministers and the Secretary of State (reflecting its public sector ownership at the time)⁵; and,
 - b. spent fuel from the fleet of operating Advanced Gas Cooled Reactors (AGR)s in Britain will instead be held in long-term interim storage at Sellafield, instead of on-site at each of the seven AGR nuclear power stations⁶.

4 *ibid.*

5 According to the consents decision, the new on-site store was required until such time a national facility for the long term management of Intermediate Level Waste or other alternative means of off-site storage or disposal became available. See:

6 Following the cessation of reprocessing of spent Oxide fuels in the Thermal Oxide Reprocessing Plant (THORP), at Sellafield (Cumbria) in 2018, spent fuel from the fleet of operating Advanced Gas Cooled Reactors (AGR) in Britain will instead be held in long-term interim storage at Sellafield. "The fuel will be stored here on an interim basis up until the 2080s, pending packaging and disposal in a Geological Disposal Facility." There are currently 14 AGRs altogether, operating at five sites in England and two sites in Scotland. These are all scheduled to close permanently between 2023 and 2030. Source: NDA (2017) Sellafield Context Plan 2017-

8.4.2.5 Buildings 9-201 and 9-202: associated development?

- 8.4.2.5.1 It falls to be noted at the outset that the Applicant alighted on this alternative classification for dDCO Work 1D Buildings 9-201 and 9-202 seemingly opportunistically, for the first time in December 2018, when required by the ExA to respond to FWQ20.0.2, in REP2-375. By then, conveniently for the Applicant, a new section 115(4A) of the PA2008 had already come into force, enabling associated developments accompanying an NSIP in Wales to be determined under the PA2008 DCO process, instead of the devolved TCPA 1990 procedures as prior to April 2018.
- a. Nevertheless, importantly, the application of section 115 remains discretionary not mandatory, mindful as well of the devolution settlement.
 - b. In any case, however fortuitous the timing, this switch in jurisdiction could not reasonably be held to absolve the Applicant of serial failings in material fact at the time of the Applicant's Public Notices and Pre-Application Public Consultations on associated developments, between September 2014 and January 2018, inclusive. As may be gleaned, for example, from APP-038 para.1.2.2; Figure 1-2; paras 1.3.1 and 1.3.33-34; Table 1-3; Table 1-6; Table 1-7; and, para.1.3.85, respectively.
- 8.4.2.5.2 The Applicant's Advocate advances two bullet points in support of a secondary proposition that "even if the facilities are not part of NSIP (and Horizon insists that they are), they would constitute associated development."
- 8.4.2.5.3 In the first bullet point, the Applicant's Advocate refers to para.5 of the DCLG Guidance on section 115 of the PA2008 and asserts merely the following:

"... the spent fuel storage facility and the intermediate level waste storage facility clearly have 'a direct relationship [with] the principal development', 'support the... operation of the principal development, or help address its impacts', are not 'an aim in itself but [are] subordinate to the principal development', are not 'only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development' and 'are proportionate to the nature and scale of the principal development'."

This proposition consists of verbatim phrases taken directly from the five core principles set out in para.5 of the DCLG Guidance.

- a. On the face of it, the Advocate plainly ignores implied requirement under Guidance para.5 for applicants to discharge properly the burden of proof regarding core principles. The Advocate has made no attempt to demonstrate how and why the proposition could be claimed to be in compliance with respective core principles. It is not possible to discern any supporting evidence, arguable case, reason or justification in respect of each core principle.
- b. To that extent, the Advocate has not been able to fault observations in REP5-083 paras 5.5.3.5-5.5.3.5.12, inclusive, regarding application of the DCLG para.5 core principles.
- c. By way of supplementing REP5-083 para.5.5.3.5.9.a. in respect of the fourth core principle in Guidance para.5 (namely, proportionality), the ExA's attention is drawn here to the following additional observations. Time and resource constraint under ExA Deadline 5 had precluded completion of earlier drafting.

Buildings 9-201 and 9-202 are evidently significantly large structures. Their design longevity (between 120 and 160 years) conveys a sense of near permanence inter-generationally, endowing the WNDA an enduring on-site legacy: para.8.4.2.1.4.a and b, respectively hereof, referring.

By statutory standards, these installations constitute a “major development”⁷ in their own right, commanding a combined footprint of 35,850m² (Building 9-201: 28,500m²; and, Building 9-202: 7,350m²: APP-120 Table D1-2, referring). Height wise, Building 9-201 (the designated Spent Fuel Storage Facility) falls just 3m short of the peak on Mound D (para.8.4.2.1.2, hereof, referring).

- (i) The combined footprint reveals the twin Buildings 9-201 and 9-202 as constituting the largest free standing installations on the WNDA, larger even than the twin cooling water intake structures (Buildings 1-411 and 2-411) which have a combined footprint of 33,756 m². The combined footprint of Buildings 9-201 and 9-202 is even greater than the combined footprint of the twin Turbine Buildings 1-108 and 2-108 (23,232 m²). Building 904 (Simulator and training building), with a footprint of 12,325 m² and essential for the safety critical operation of the twin reactors, makes up the next largest installation. While all three latter structures are directly critical for the safe operation of the twin nuclear reactors at all times, Buildings 9-201 and 9-202 on the other hand have no direct functional, purposive and technical relationship with, or safety critical involvement in, the functioning of the proposed twin UKABWRs at Wylfa.
- (ii) By way of a different size comparison, the combined footprint of Buildings 9-201 and 9-202 appears to be approximately one and half times larger than the footprint of the Magnox Turbine Hall (and, maybe even the wrap around superstructure enveloping the now closed twin Magnox nuclear reactors), next door: see, for example, the inset on the Power Station Site Layout Plan; in combination with: WNDA Reference Point 3 Construction, in REP5-013.

In other words, in respect of the fourth core principle in DCLG Guidance para.5, Buildings 9-201 and 9-202 arguably stand manifestly disproportionate in relation to the nature and scale of the principal NSIP Nuclear Generation Station on the WNDA, physically as well as temporally. These twin Buildings could arguably be said to affront the DCLG proportionality principle for associated development.

- d. Furthermore, the Advocate maintains silence on whether the twin structures could constitute “developments in their own right”.
 - (i) The silence beggars para.12 of the April 2013 Updated DCLG Guidance, which expressly requires consideration of whether a proposal could “in its own right constitute a project”.
 - (ii) To the extent the Applicant continues evading material consideration, the Applicant could be said to misapply DCLG Guidance on section 115 of the PA2008. In this instance, the material consideration being: are Buildings 9-201 and 9-202 capable of constituting non-NSIP non-Associated large primary standalone development in their own right?
- e. For the avoidance of doubt, as additional supplement to REP5-083 para.5.5.3.5.11, it is noted that under para.12 of the DCLG Guidance, reference in Annex B to “waste storage facilities” constitutes reference to conventional waste facilities. And, reference in the same Annex to “Hazardous waste facilities” does not extend to higher activity radioactive waste facilities.

8.4.2.5.4 In the second bullet point, the Applicant’s Advocate asserts that:

“If the facilities are associated development, the only practical consequence would be that these are listed slightly different in the DCO.”

⁷ Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 defines a “major development” as constituting:
“(e) development carried out on a site having an area of 1 hectare or more;”
Note: 1 hectare equals 10,000m².

Is the advocate dismissing any material consequence attending serial material deficiency in the Applicant's Pre-Application Public Consultation documents. The Advocate reduces the effect of reclassifying Buildings 9-201 and 9-202 to merely a slightly different listing in the dDCO. With respect, there exist material issues preceding the DCO Examination, pursuant to statutory public consultation requirements under the PA2008. The Advocate appears to overlook potentially material considerations. In particular, as regarding:

- a. material deficiency in any legal requirement for accuracy of project description and adequacy of relevant information in respect of associated developments, as published in a number of serial Public Notices going as far back as September 2014: RR-087 para.2.3.d; and, REP5-083 para.5.5.3.4.2, referring. Sections 48, 56 and 58 of the PA2008, for example, may also have a bearing; and,
- b. material deficiency in the content of the Applicant's Pre-Application Public Consultation Documents. There occurred manifest express failure to identify and provide full details on Buildings 9-201 and 9-202 as associated developments in all public literature at the material time between September 2014 and January 2018, inclusive: para.8.4.2.5.1.b hereof; and, REP5-083 paras 5.5.3.4.3-5.5.3.4.5, inclusive, referring. Sections 42, 47 and 49 of the PA2008, for example, may also have a bearing. The public were denied fair opportunity to comment on these associated developments which remained unidentified and unexplained, in contrast to all the other associated developments then accompanying the proposed Wylfa Newydd Project.

8.4.2.6 REP5-003 dDCO: deletion of Work No. 1D Buildings 9-201 and 9-202 – devolved jurisdiction

- 8.4.2.6.1 On balance, from this review of the Applicant's response in REP7-001, it would appear that a case for deletion of Work No. 1D Buildings 9-201 and 9-202 from the dDCO for Wylfa Newydd continues to remain arguable.
- a. Buildings 9-201 and 9-202 are arguably capable of constituting non-NSIP non-Associated large primary standalone developments in their own right and, thus, fall subject to default determination of development consents under relevant provisions of the TCPA 1990, as devolved to Wales.
 - b. It would be inappropriate to include Work No. 1D involving Buildings 9-201 and 9-202 in the proposed Grant of DCO for Wylfa Newydd. REP5-083 paras 5.5.5.1-5.5.5.4, inclusive, referring as well.

J Chanay
25.03.2019