

# **Wylfa Newydd Project**

## Post Oral Hearing Summaries for

### Tuesday 5th March

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# 1 HORIZON NUCLEAR POWER WYLFA LIMITED – WYLFA NEWYDD PROJECT – DEVELOPMENT CONSENT ORDER APPLICATION

## 1.1 Written summary of Horizon's oral submissions at the ISH held on 5 March 2019

### *Introduction*

- 1.1.1 This note summarises submissions made on behalf of Horizon Nuclear Power Wylfa Limited (Horizon) at the Issue Specific Hearing on Compulsory Acquisition held on 5 March 2019.
- 1.1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority (ExA) on 26 February 2019. In setting out Horizon's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda.
- 1.1.3 In addition to covering the agenda items as noted above, this note also relates to the ExA's list of action points arising from the hearing.

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing	Relevant document references
<b>Item 3 – Development Consent Order provisions</b>		
3(b) Which articles of the DCO engage compulsory acquisition	<p>Mr Michael Humphries QC on behalf of Horizon provided a brief outline of the proposed approach to compulsory acquisition in the draft Order. It was noted that the Order contains a number of articles providing for the compulsory acquisition of interests in land being:</p> <ul style="list-style-type: none"><li>• Article 25 (Compulsory acquisition of land)</li><li>• Article 27 (Compulsory acquisition of rights) and Schedule 11</li><li>• Article 29 (Private rights)</li><li>• Article 31 (Acquisition of subsoil only)</li></ul>	Draft DCO [REP5-003] Statement of Reasons [REP6-008].

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	<ul style="list-style-type: none"><li>Article 32 (Acquisition of land limited to subsoil lying more than 9 m beneath the surface) and Schedule 13.</li></ul> <p>It was also explained that the draft Order contains a package of rights that relate to powers of temporary possession. These are:</p> <ul style="list-style-type: none"><li>Article 35 (Temporary use of land for carrying out of authorised development)</li><li>Article 37 (Temporary use of land for maintaining the authorised development)</li><li>Schedule 14 (Land which only temporary possession may be taken).</li></ul> <p>Mr Humphries also noted that the draft Order imports the compensation rights that would apply in respect of an exercise of such compulsory acquisition powers.</p> <p>Mr Humphries referred the Examining Authority to section 8 of the Statement of Reasons [REP6-008] which sets the above powers in greater detail.</p> <p>In response to a question from the Examining Authority, it was clarified that the changes made to Schedule 14 as shown in the draft Order [REP5-003] were to remedy an omission from Schedule 14 of a number of highway relates plots that Horizon is seeking powers of temporary possession in respect of as reflected in the Book of Reference [REP6-010, REP6-011, REP6-012] and the Land Plans [REP6-021]. Mr Humphries agreed to provide a post-hearing note detailing these changes.</p>	

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3(c) Whether protective provisions are in a satisfactory form that is agreed with relevant parties	<p>Mr Humphries on behalf of Horizon explained that significant progress has been made in respect of protective provisions since the Issue Specific Hearings held in January 2019. Mr Humphries provided a brief overview of the negotiations between Horizon and affected statutory undertakers as follows.</p> <ul style="list-style-type: none"> <li>• Magnox: protective provisions largely agreed.</li> <li>• National Grid: protective provisions largely agreed.</li> <li>• Welsh Water: protective provisions largely agreed.</li> <li>• SP Manweb Plc and SPEN: protective provisions agreed.</li> <li>• Network Rail: protective provisions not agreed but negotiations are ongoing.</li> <li>• Isle of Anglesey County Council ("IACC"): good progress has been made but negotiations are ongoing. IACC provided Horizon with revised provisions seeking more detail on matters relating to traffic management and diversions, and closures to public highways. Mr Humphries confirmed that Horizon is considering these and will revert in due course. The provisions now also provide protections for IACC as the lead flood authority in respect of the highways.</li> </ul> <p>It was further explained that the following statutory undertakers have to date not responded to Horizon's requests for engagement on protective provisions.</p> <ul style="list-style-type: none"> <li>• Openreach Ltd;</li> <li>• Wales and West Utilities;</li> <li>• Telefonica UK Ltd;</li> </ul>	Draft DCO [REP5-003]

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	<ul style="list-style-type: none"> <li>Centurylink Communications UK Ltd; and</li> <li>Zayo Group (UK) Ltd.</li> </ul> <p>However, it was noted that the standard telecommunication protective provisions provided in Schedule 15 at Part 2 would apply in respect of them.</p> <p>In response to a question from the Examining Authority, Mr Humphries provided a brief overview of the provisions in the draft Order that provide for compensation in the event that compulsory acquisition powers are exercised. Mr Humphries explained that the modifications proposed at article 33 were to ensure that the terms and timeframes under the Order and the Planning Act 2008 were consistent. Further, article 27(3) introduces Schedule 12 which makes it clear that compensation is available to landowners where Horizon has created and acquired new rights over, or imposed restrictions on, land.</p>	
<b>Item 4 – Statutory conditions and general principles applicable to the exercise of compulsory acquisition</b>		
4(a) Whether the purposes for which the compulsory acquisition powers are sought comply with section 122(2) of the Planning Act 2008.	<p>Mr Humphries explained that section 122 of the Planning Act 2008 provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.</p> <p>The condition at subsection 2 is that the land -</p> <ul style="list-style-type: none"> <li>(a) is required for the development;</li> <li>(b) is required to facilitate or is incidental to that development;</li> <li>(c) is replacement land (for open spaces, common land etc.).</li> </ul>	<p>Statement of Reasons [REP6-008]</p> <p>Statement of Reasons – Appendix 11-1 Justification Table [REP6-008]</p> <p>Land Plans [REP6-021]</p>

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	<p>Mr Humphries confirmed that all land within the Order Limits that is subject to compulsory acquisition powers is required for the development or required to facilitate or is incidental to that development.</p> <p>Appendix 11-1 of the Statement of Reasons lists the land and rights to be acquired (as shown on the Land Plans [REP2-014]) as well as the works which will take place in each parcel, or purpose for which the interests or rights will be acquired. The Work Plans [REP2-015] then show where the proposed works will take place within the Order Limits.</p> <p>It was confirmed that there is no replacement land within the meaning of s122.</p>	Work Plans [REP2-015]
4(b) Whether the proposal would comply with relevant guidance on compulsory acquisition.	<p>Mr Humphries confirmed that Horizon's approach to compulsory acquisition has been informed and carried out with regard to the DCLG Guidance related to procedures of compulsory acquisition, September 2013 ("<b>Guidance</b>"), as detailed in section 9 of the Statement of Reasons [REP6-008]. The Guidance sets out the general factors that the decision-maker must have regard to in determining whether or not to grant compulsory acquisition powers:</p> <ul style="list-style-type: none"> <li>• that all reasonable alternatives to compulsory acquisition (including modifications to the project) have been explored (paragraph 8 of the Guidance);</li> <li>• that the proposed interest in land is for a legitimate purpose and is necessary and proportionate (paragraph 8 of the Guidance);</li> <li>• that the promoter (Horizon) has a clear idea of how it intends to use the land which it is proposing to acquire (paragraph 9 of the Guidance);</li> </ul>	

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	<ul style="list-style-type: none"> <li>that there is a reasonable prospect of the requisite funds for the land acquisition becoming available (paragraph 9 of the Guidance); and</li> <li>that there is justification for interfering with the human rights of those with an interest in land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention (paragraph 10 of the Guidance).</li> </ul> <p>It was recognised that these matters are addressed in respect of the following Agenda Items.</p> <ul style="list-style-type: none"> <li>Reasonable alternatives: Item 4(c);</li> <li>Legitimate purpose, necessary and proportionate: Item 4(d);</li> <li>Clear idea how the land is to be used; Appendix 11-1 Statement of Reasons and Item 5/6/7 in part;</li> <li>Requisite funds: Item 8;</li> <li>Justification for interfering with human rights: Item 4(e).</li> </ul>	
4(c) Whether consideration has been given to all reasonable alternatives to compulsory acquisition and temporary possession and whether there are any lesser steps that	<p>On behalf of Horizon, Mr Humphries confirmed that Horizon has considered all reasonable alternatives to compulsory acquisition and temporary possession.</p> <p>Mr Humphries explained that Horizon's approach to the acquisition of land and rights necessary for the Project has been informed by the Guidance, particularly paragraphs 25 and 26 which recognise that "<i>applicants should seek to acquire land by negotiation where ever practicable</i>". Nevertheless, it is appropriate that "<i>as a contingency</i></p>	<p>Statement of Reasons [REP6-008]</p> <p>Site Selection Reports [APP-436 to APP-442]</p>

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could meet the identified need.	<p><i>measure, [applicants] should plan for compulsory acquisition at the same time as conducting negotiations.”</i></p> <p>Horizon has sought to acquire all rights and interests in land through private agreement on commercial terms and continues to adopt this approach. Mr Humphries provided a brief summary of these negotiations, confirming that Horizon:</p> <ul style="list-style-type: none"> <li>• owns, leases or has an option over the majority of the Main Site, the only exception being small parcels of land owned by Crown and NDA/Magnox;</li> <li>• has an option agreement over the Llanfaethlu site required for the Off-Site Power Station Facilities;</li> <li>• has agreed and exchanged with the landowner and Welsh Government an option agreement to acquire a lease in the land at Parc Cybi;</li> <li>• has acquired the freehold site at Dalar Hir and has options over the adjoining land;</li> <li>• has identified 30 affected landowners in respect of the A5025 Off-Line Highway Improvements. Horizon has reached agreement in principle with the majority of those landowners, and has reiterated its willingness to negotiate the acquisition of that land by voluntary agreement. While these negotiations are ongoing, the status of these negotiations are as follows: <ul style="list-style-type: none"> <li>○ Heads of Terms have been agreed with seven of the landowners;</li> </ul> </li> </ul>	<p>Environmental Statement, Vol D, Chapter 2 [APP-121]</p> <p>Design and Access Statement, Volumes 1, 2 and 3 [REP4-016; REP4-017; REP4-108 and REP4-019].</p>

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	<ul style="list-style-type: none"><li>○ Negotiations are in an advanced state with 15 of the landowners;</li><li>○ Horizon has option agreements with five of the landowners;</li><li>○ Horizon has not reached agreement with three of the landowners.</li></ul> <p>It was noted that there are a further three plots affected by the A5025 Off-Line Highway Improvements with unknown landowners.</p> <p>Mr Humphries reiterated that compulsory acquisition powers are nevertheless required for the following reasons.</p> <ul style="list-style-type: none"><li>• In the event that the remaining negotiations are unsuccessful, Horizon requires the power to compulsory acquire the remaining rights and interests to deliver the Project.</li><li>• There are also some interest where the ownership of land is unknown, and where it would therefore not be possible to acquire the interests except by way of compulsion.</li><li>• Where Horizon has entered into an option agreement that has not yet been exercised, or a short lease, Horizon has taken a cautious approach of seeking compulsory acquisition powers to ensure that it has the right to acquire the interests in the land in the event the owner is unable to pass title, or leasehold land is required for longer than anticipated.</li><li>• Where Horizon owns or has a long leasehold interest in land, Horizon is seeking to extinguish rights over that land to ensure that no known or unknown third party rights can remain and interfere with the</li></ul>	

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	<p>implementation of the Project. With the exception of certain rights held by NDA or certain statutory undertakers.</p> <p>(See section 7 of the Statement of Reasons [REP6-008])</p> <p>To assist the Examining Authority, Horizon has agreed to provide a list of the submission documents that detail the assessment of alternatives that Horizon has undertaken in preparing its proposal. This is provided at Annexure A of this Summary of Oral Submissions.</p>	
4(d) Whether the rights to be acquired, including those for temporary possession, are no more than is reasonably necessary and proportionate for the purposes of the development.	<p>As per paragraph 11 of the Guidance, to be satisfied that the conditions of s122 of the 2008 Act to be met:</p> <p><i>"The Secretary of State will need to be satisfied that the land to be acquired or taken is no more than is reasonably necessary for the purpose of the development."</i></p> <p>Or if taken for an alternative purpose:</p> <p><i>"...the land to be taken is no more than is reasonably necessary for that purpose, and that it is proportionate".</i></p> <p>Mr Humphries explained that the cascading nature of the six class interests Horizon is seeking to acquire in the land within the Order Limits ensures that only land that is necessary and proportionate for the purposes of the development is taken. Horizon will:</p> <ul style="list-style-type: none"> <li>• Acquire rights instead of interests where feasible (for example, drainage rights);</li> <li>• Use powers of temporary possession rather than permanent acquisition of land or rights, where feasible (for example in relation to highway) (as identified in schedule 14 of the Order);</li> </ul>	<p>Statement of Reasons [REP6-008]</p> <p>Statement of Reasons - Justification Table at Appendix 1 [REP6-008]</p> <p>Land Plans [REP6-021]</p> <p>Work Plans [REP2-015]</p> <p>EIA Figure Booklet [APP-065]</p>

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	<ul style="list-style-type: none"> <li>Use its powers to impose restrictive covenants in order to avoid having to acquire an interest in land where a restrictive covenant can provide the necessary protections (such as in relation to flood mitigation areas) (as identified in schedule 13 of the Order).</li> </ul> <p>The Examining Authority sought clarification as to the recent changes that had been made to the Land Plans submitted at Deadline 6 (19 February 2019) [REP6-021]. Mr Humphries explained that only minor changes had been made to reflect recent discussions between Horizon and the Nuclear Decommissioning Authority and Magnox regarding the class interests Horizon is seeking in land surrounding the Existing Power Station site, and the recent engagement with Welsh Government regarding land that it owns/has interests in at Dalar Hir, Parc Cybi and the A5025 Off-Line Highway Improvements (Section 1) qualifying as Crown Land.</p> <p>Mr Humphries noted that the updated Crown Land Plans submitted at Deadline 6 (19 February 2019) [REP6-022] contained a GIS error and that this would be remedied for Deadline 8 (25 March 2019).</p>	Site Selection Report, Volume 1 – Introduction and Context [APP-436]
4(e) Having regard to section 122(3) of the PA 2008, whether there is a compelling case in the public interest for the compulsory acquisition in relation to:	<p>Mr Humphries outlined that pursuant to section 122(3) of the Planning Act 2008, in order to grant an order for development consent including provisions authorising the compulsory acquisition of land, the Secretary of State must be persuaded that the public benefits that would be derived from the compulsory acquisition will outweighed the private loss that would be suffered by those whose land is to be acquired.</p> <p>Mr Humphries explained that the need for the Project is established by NPS EN1 and NPS EN6 which detail the urgent need for new nuclear power generation, and remain relevant for Projects that are anticipated</p>	Statement of Reasons [REP6-008]  Responses to ExA's [REP5-002]. See Q2.4.53 to Q2.4.58.  Examination Hearing Note of CPO

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<p>i. The need in the public interest for the project to be carried out</p> <p>ii. The private loss to those affected by compulsory acquisition</p>	<p>to deploy after 2025 and therefore must be considered under s.105 of the Planning Act 2008.</p> <ul style="list-style-type: none"> <li>EN1 makes it clear that the need for energy infrastructure such as the Wylfa Newydd DCO Project will often be urgent and "<i>without amounts of new large scale energy infrastructure, the objectives of its energy and climate change policy cannot be fulfilled</i>".</li> <li>EN6 urges decision makers to "<i>assess applications for new nuclear power stations on the basis that the need for such infrastructure has been demonstrated</i>" (EN6 para 2.2.1).</li> </ul> <p>The Ministerial Statement on Energy Infrastructure (December 2017) confirmed that NPS EN1 and EN6 "<i>continue to be important and relevant for projects which will deploy after 2025...</i>". As such, "<i>the Secretary of State would be required, under s.105(c) of the Act, to have regard to the consent of EN1 and EN6</i>".</p> <p>This urgent need for nuclear power is further supported by the Oxera Report commissioned by Horizon and appended to the Statement of Reasons [REP6-008] which presents further evidence for the continued need for new nuclear power to deliver the UK's energy requirements to 2025 and beyond.</p> <p>Further, the Ministerial Statement (December 2017) demonstrates the Government's continued support for new nuclear power generation at Wylfa. It recognises that "<i>sites listed in EN6 on which a new nuclear power station is anticipated to deploy after 2025 will continue to be considered appropriate sites and retain strong Government support during the designation of the new NPS</i>".</p> <p>Further, the Project represents a very significant investment in the area. The Welsh Government has recognised the strategic importance of the</p>	<p>Compensation [REP6-020]</p>

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	<p>Wylfa Newydd DCO Project through the designation of Anglesey Enterprise Zone (which includes the land at Wylfa). Further social and economic benefits will be delivered as detailed in the draft DCO s106 agreement [REP6-004].</p> <p>Mr Humphries acknowledged that the effect of compulsory purchase on human rights is relevant to the consideration under s.122(3) of the 2008 Act as to whether there is a compelling case in the public interest for land to be acquired compulsory, and to whether there is justification for interfering with the human rights of those with an interest in land affected. The European Convention on Human Rights (Convention) includes articles relevant to powers of compulsory acquisition. Turning to those, Mr Humphries confirmed that while the Order has the potential to infringe on human rights, this infringement will be in compliance with the Convention provided:</p> <ul style="list-style-type: none"> <li>• there is a fair and public hearing by an independent and impartial tribunal i.e. through the DCO Process and if necessary the Lands Chamber of the Upper Tribunal (Article 6);</li> <li>• the interference with individuals' rights to respect for private and family life and home, and right to peaceful enjoyment of his possessions takes place in accordance with the law (Article 8 and Article 1 of the First Protocol); and</li> <li>• the infringements are proportionate and in the public interest (Article 8 and Article 1 of the First Protocol).</li> </ul>	

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<b>Item 5 – Representations by affected persons and other interested parties</b>		
5(a) Affected persons who requested a compulsory acquisition hearing and wish to make oral representations	<p>Mr Humphries concurred with the brief overview IACC gave in respect of their remaining concerns regarding compulsory acquisition. These were recognised as holding objections subject to agreement being reached on the protective provisions. Both Horizon and IACC agreed that agreement on the protective provisions was close.</p> <p>In response to Ms Hayward's submissions, Mr Humphries said that Horizon would consider her query regarding whether the Office of Nuclear Regulation's demographic assessment of the Wylfa Newydd site as set out in its Deadline 2 (4 December 2018) submission [REP2-355] applied to Felin Gafnan, as well as consider her request for the photo montage of Felin Gafnan discussed at the Issue Specific Hearing on Monday 4 March 2019.</p>	<p>CA Objections Schedule [REP5-042]</p> <p>Draft DCO Schedule 15, Part 8 [REP5-003]</p> <p>Main Consultation Report [APP-037]</p>
5(b) Other affected persons wishing to make oral representations	N/A	
5(c) Persons who might suffer 'injurious affection' and thus fall within 'Category 3' wishing to make oral representations	N/A	
5(d) Any interested parties	N/A	

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing	Relevant document references
<b>Item 6 – Justification for the proposed Compulsory Acquisition of specific plots that remain the subject of objection</b>		
Clarification of the justification for the proposed Compulsory Acquisition of specific plots that remain the subject of objection	<p>Mr Humphries explained that Horizon had taken a conservative approach to populating the Compulsory Acquisition Objections Schedule [REP5-042]. For that reason, the schedule includes all persons that the Examining Authority had identified as possibly objectors. However, Horizon considers that many of the objectors listed in the schedule have either not objected to matters relating to compulsory acquisition or do not have a qualifying interest in land that.</p> <p>Mr Carl Hughes on behalf of Horizon then spoke to each of the individuals listed in the Compulsory Acquisition Objections Schedule [REP5-042] and confirmed for the Examining Authority whether the individual was identified in the Book of Reference i.e. as a person who owns or has an interest in land that will be subject to powers of compulsory acquisition (Category 1 and 2 persons), or who Horizon has identified as a Category 3 person being someone who may be entitled to make a "relevant claim" for compensation as a result of the implementation of the Order.</p> <p>It was stressed, however, that omission from the Compulsory Acquisition Objections Schedule or the Book of Reference does not prevent that person seeking to make a relevant claim for compensation as a result of implementation of the Order. It was confirmed that an updated Compulsory Acquisition Objections Schedule would be submitted at Deadline 8 (25 March 2019).</p>	<p>CA Objections Schedule [REP5-042]</p> <p>Book of Reference, Parts 1, 2 and 3 [REP6-010, REP6-011, REP6-012]</p>
<b>Item 7 – Land falling within particular sections of the Planning Act 2008</b>		
7(a) Section 127 – Statutory undertakers' land	Mr Humphries on behalf of Horizon acknowledged that matters of compulsory acquisition relating to statutory undertakers' land and rights	Land Plans [REP6-021]

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing	Relevant document references
	<p>over statutory undertakers' land had in large parts been addressed earlier with respect to the progress on protective provisions.</p> <p>Mr Humphries confirmed that the purpose of section 127 of the Planning Act 2008 was to ensure that no serious detriment was caused to statutory undertakers as a result of the proposed development, and that this was the purpose of the protective provisions detailed earlier.</p>	<p>Site Utilities and Connections to Existing Statutory Undertakers plans:</p> <ul style="list-style-type: none"> <li>• Site Campus - APP-016;</li> <li>• Park and Ride - APP-023; and</li> <li>• Off-site Power Station Facilities - APP-025]</li> </ul> <p>Statutory Undertaker and Special Category Land Schedule [REP2-011]</p>
7(b) Section 130 – National Trust land (and any rights in relation to other land)	<p>Mr Humphries on behalf of Horizon outlined how section 130 of the Planning Act 2008 applied to land belonging to the National Trust that was held inalienably.</p> <p>It was noted that there is only one plot within the Order Limits where this could have applied and that was plot 61 which National Trust is the presumed owner of pursuant to the <i>ad medium filum</i> principle. However, Horizon has made it clear that it is not seeking to acquire that land hence why it is classified as Class 6 (no powers of compulsory acquisition).</p> <p>National Trust has asked this to be made clearer on the face of the Order. Horizon is therefore proposing a new article and corresponding</p>	<p>Land Plans [REP6-021]</p> <p>Statutory Undertaker and Special Category Land Schedule [REP2-011]</p>

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	<p>schedule in the draft Order specifying that no powers under the Order may be exercised in respect of that land.</p> <p>As a result of this, section 130 does not apply.</p> <p>It was noted that National Trust has a small number of other land related interest but these do not engage section 130.</p>	<p>Horizon's response to First FWQ Q4.0.20 [REP2-375]</p> <p>Horizon's response to National Trust's Written Rep [REP3-028]</p>
7(c) Section 132 – Confirmation of the position in relation to open space land	Mr Humphries on behalf of Horizon confirmed that there is no open space within the meaning of section 132 of the Planning Act 2008 within the Order Limits.	
7(d) Section 135 – The position in relation to Crown land since Deadline 6, having particular regard to the provisions of section 135	<p><b>Welsh Government interests</b></p> <p>On behalf of Horizon, Mr Humphries confirmed the position as represented by Welsh Government, that the parties were now agreed that land which the Welsh Government had interests in constitutes Crown land for the purposes of section 135 of the Planning Act 2008. As such, Welsh Government's consent to the compulsory acquisition powers in the Order is required.</p> <p>Mr Humphries explained that Horizon has formally requested this consent from the Welsh Government but that as of this yet this was still to be provided.</p> <p>In response to comments from Welsh Government that it was still considering the request, Mr Humphries acknowledged that it would be helpful if Welsh Government could outline its current concerns about</p>	<p>Crown Land Plans [REP6-022]</p> <p>Crown Land and Interests s.135 Schedule [REP5-043]</p>

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	<p>granting this consent. Horizon and Welsh Government agreed to take the matter away and consider further.</p> <p><b>Crown Estate interests</b></p> <p>Mr Humphries confirmed that a draft section 135 letter have been provided by the Crown Estate to Horizon, subject to agreement on the drafting of article 82 (Crown Rights).</p> <p>Mr Humphries confirmed that Horizon had gone back to the Crown Estate on that, suggesting some amendments to article 82 to align it to the current drafting in the draft Order. Horizon anticipates that agreement on this will be reached shortly.</p> <p>As noted above, Horizon has identified an error in the updated Crown Land Plans which it will remedy Deadline 8 (25 March 2019).</p>	
<b>Item 8 – Whether adequate funding is likely to be available</b>		
8(a) The financial status of the Applicant	<p>The Examining Authority sought confirmation from Horizon that the Funding Statement as submitted [APP-033] provides sufficient financial information for the purpose of the examination.</p> <p>In response, Mr Humphries confirmed this to be the case for the reasons that follow.</p> <p>The Funding Statement is correct in so far as it sets out the structure of Horizon within the Horizon Group and Hitachi, Ltd.'s ownership. Acknowledging the suspension decision, Mr Humphries clarified that at the time the suspension decision is lifted, the matters set out in the Funding Statement would remain correct.</p> <p>Turning to the consequences of the suspension, Mr Humphries acknowledged that this concerns two aspects of the guidance:</p>	<p>Funding Statement [APP-033]</p> <p>Statement of Reasons [REP6-008]</p> <p>Responses to FWQ2.4.53, Q2.4.55 and Q2.4.56 [REP5-002]</p>

ExA's Agenda Item	Summary of Horizon's Oral Submission made in the hearing	Relevant document references
	<ul style="list-style-type: none"> <li>Compulsory acquisition and the ability of Horizon to pay the appropriate compensation for the exercise of those powers; and</li> <li>Whether there is a reasonable prospect of the development being undertaken.</li> </ul> <p>Mr Humphries addresses these two matters in turn.</p> <p>Mr Humphries explained that as set out in Examination Hearing Note on CPO Compensation [REP6-020], a new article 83 has been proposed to deal with the first tissue. The purpose of this article is to make clear that the undertaker cannot undertake the compulsory acquisition powers conferred under the draft Order unless it has first put in place to the satisfaction of Secretary of State, a guarantee or alternative form of security.</p> <p>So far as the Guidance requires the Secretary of State to be satisfied that there will be sufficient funds for any compensation payable in respect of the exercise of compulsory acquisition powers, Horizon stated that this article will achieve this. It was noted that a similar mechanism was used in Tidal Lagoon Swansea Bay where there were uncertainties as to funding.</p> <p>Turning to the second matter, and whether there is reasonable prospect of the development being undertaken, of relevance is NPS EN1 at paragraph 4.1.9 which provides:</p> <p><i>"In deciding to bring forward a proposal for infrastructure development, the applicant will have made a judgement on the financial and technical viability of the proposed development, within the market framework and taking account of Government interventions. Where the IPC considers, on information provided in an application, that the financial viability and technical feasibility of the proposal has been properly assessed by the</i></p>	<p>Examination Hearing Note of CPO Compensation [REP6-020]</p>

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	<p><i>applicant it is unlikely to be of relevance in IPC decision making (any exceptions to this principle are dealt with where they arise in this or other energy NPSs and the reasons why financial viability or technical feasibility is likely to be of relevance explained).</i>"</p> <p>Similarly, the DCLG Guidance Planning Act 2008: Application Form Guidance (paragraph 26) provides:</p> <p>[...] <i>A funding statement must contain sufficient information to enable the Secretary of State to be satisfied that, if it were to grant the compulsory acquisition request, the proposed development is likely to be undertaken and not be prevented due to difficulties in sourcing and securing the necessary funding.</i></p> <p>In light of the above, and in response to comments made by Interested Parties regarding the suspension decision, Mr Humphries explained that Horizon was now proposing to include a new article 84 in the draft Order relating to security for funding of the Project.</p> <p>The article would in effect prevent the commencement and/or implementation of the development pursuant to the Order until the Secretary of State was satisfied that there was a reasonable prospect of the authorised development being undertaken and sufficient funds were available for the Project. This in effect replicates the test as per the Guidance. At the point the suspension is lifted, the undertaker will be required to produce materials to the Secretary of State demonstrating satisfaction of these tests.</p> <p>Horizon is seeking one carve out to article 84 for Work No. 12 SPC Works to enable efficient construction programme. Horizon accepts, however, that if Work No. 12 was to be undertaken prior to the</p>	

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	<p>undertaker satisfying the financial tests of article 84, some form of restoration security would be appropriate.</p> <p>In response to comments raised by IACC regarding the matter of blight, Mr Humphries confirmed that Horizon had considered this but was of the view that this was not an issue for the reasons that follow.</p> <ul style="list-style-type: none"><li>• The designation of the Main Site for new nuclear pursuant to NPS EN-6 means the land has in effect fallen within schedule 13, Town and Country Planning Act 1990 for a number of years and so far as Horizon is aware, no blight claims have been made in respect of it.</li><li>• Further, as described earlier, Horizon a large portion of the Order Land or has options over it. In those circumstances it's difficult to see how there could be blight.</li><li>• The land required for the A5025 Off-Line Highway Improvements is for the most part agricultural land. Blight most commonly applies in relation to residential properties but Horizon is not acquiring such properties.</li></ul> <p>Further, the fact that the undertaker could not exercise any powers of compulsory acquisition until it has satisfied article 83, means that in effect no blight would be created. If it were to occur, it could only ever occur once those CPO powers are capable of being exercised, and that only happens when security provided.</p> <p>Mr Humphries explained that any drafting of article 84 was yet to be proposed but agreed that Horizon would circulate some proposed drafting following the close of this hearing for discussion at the Issue Specific Hearing on Wednesday 6 March 2019.</p>	

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8(b) The security of the funding in the event that any or all of the benefit of the DCO is transferred to another person	<p>Mr Humphries explained that both article 83 and 84 were intended to apply to the "undertaker". Therefore, were the Order transferred pursuant to article 9, the undertaker whoever that might be, would also be similarly bound by these articles.</p> <p>Mr Humphries noted that a transfer of the benefit of the Order pursuant to article 9 could only occur if (a) either the Secretary of State consent to the transfer, in which case it can satisfy itself as to the financial standing of the transferee, or (b) without the Secretary of State's consent if the transferee were a nuclear site licence holder. as Mr Humphries explained, a company must be of a certain financial standing to hold such a licence, in effect replicating the criteria set out in the Guidance.</p> <p>Welsh Government queried whether the conditions of a nuclear site licence regarding financial standing applied to construction of a nuclear power plant or only operation of a nuclear power plant. Mr Humphries agreed that strictly speaking a holder of a nuclear site licence must be sufficiently resourced to operate a nuclear power station but recognised that those companies that operate nuclear power plants are typically very large, well resources companies.</p> <p>The Examining Authority wished to clarify a comment made by Mr J Chanay in their representation [REP6-053] which referred to the "dismantling" of Horizon. Mr Humphries clarified that this comment was referring to the down-scaling of Horizon following the suspension decision. As is public information, Horizon is transitioning to a smaller company to maintain things until such time as the suspension is lifted.</p> <p>Mr Humphries made two final administrative points:</p> <ul style="list-style-type: none"> <li>• Mr Humphries drew the Examining Authority's attention to the minor error that was in Horizon's Request for Non-Material Change on</li> </ul>	

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	<p>blasting hours and therefore repeated in the Examining Authority's decision paper. Mr Humphries requested that this decision paper be re-released with this error corrected; and</p> <ul style="list-style-type: none"> <li>Mr Humphries noted the request that the accepted Requests for Non-Material Change be transposed into the necessary application documents would be very difficult for Deadline 7 (14 March 2019) given the tight timescales but that if acceptable, Horizon would endeavour to do this by Deadline 8 (25 March 2019).</li> </ul>	
<b>Item 9 – Next steps (by Deadline 8, 25 March 2019)</b>		
9(a) Update to, completion and submission of the final CA schedule	It was acknowledged that an updated Compulsory Acquisition Objections Schedule would be submitted at Deadline 8 (25 March 2019).	
9(b) Update to, completion and submission of the final Book of Reference	It was acknowledged that a final Book of Reference would be submitted at Deadline 8 (25 March 2019).	