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To: [Wylfa Newydd; "Kay Sully"](#)
Cc: [GRANT Beth](#)
Subject: Wylfa DCO: Final Submission on behalf of Land and Lakes
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Attachments: [Wylfa DCO Land Lakes Final Submission.PDF](#)
Importance: High

Dear Sir/Madam

Please find attached a final submission on behalf of Land and Lakes (Anglesey) Limited.

This submission does not seek to introduce any new evidence or put forward points that have not previously been made by LL. It is intended to assist the ExA by identifying the main issues relevant to LL's case which LL consider remain outstanding at the close of the Examination and providing references to material already submitted to assist the ExA in their determination of those issues.

We would be grateful if the ExA would exercise its discretion and accept this submission as part of the Examination process.

Please can you kindly acknowledge receipt.

Kind regards

Mike

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**Wylfa Newydd Nuclear Power Station
Development Consent Order Application**

COMMENTS IN RELATION TO HNP'S RESPONSE TO THE EXA'S QUESTION 17.2.4

1. INTRODUCTION

1.1 This document does not seek to introduce any new evidence or put forward points that have not previously been made by LL. It is intended to assist the ExA by identifying the main issues relevant to LL's case which LL consider remain outstanding at the close of the Examination and providing references to material already submitted to assist the ExA in their determination of those issues.

1.2 The ExA will no doubt be well aware of the main points of LL's case at the Examination and these are not repeated here.

1.3 The main outstanding issues between HNP and LL concern the proposed Grampian-style condition which LL propose as the mechanism for halting the development of the Site Campus. The Site Campus is not acceptable in planning terms for all of the reasons outlined during the Examination, and providing for a suitable alternative is a means of ensuring the delivery of a project which has an acceptable impact overall. Within the broader heading of whether the Grampian-style condition is legal and appropriate, LL consider there are four main issues between LL and HNP that remain following the exchange of opinions and submissions on this topic:

- the relevance and status of commercial negotiations between HNP and LL;
- the evidence before the ExA as to the effect of the LL scheme on the viability of the project as a whole;
- whether the respective s.106 agreements for the WN project and the LL scheme are compatible; and
- whether the proposed mechanism amounts to a 'change'.

1.4 For ease of reference, the following document references are relevant to this matter:

- LL's submissions appear at [REP4-036] where LL set out the proposed Grampian-style condition and explain why this mechanism is both legal and suitable. A number of precedent decisions are provided from page 13 onwards.
- HNP responded to the proposed mechanism within [REP5-248].
- Further commentary was provided by LL within section 6 of LL's deadline 6 submissions [REP6-055].
- At DL8, LL submitted the Opinion of Mr Andrew Fraser-Urquhart QC which confirmed, in short, that the mechanism proposed was lawful and suitable [REP8-076].
- HNP in turn responded with an Opinion from Mr Michael Humphries QC [REP9-027], and provided submissions within HNP's response to the ExA's Rule 17 Question 17.2.4 [REP9-006].

2. COMMERCIAL NEGOTIATIONS

2.1 HNP continues to argue that a commercial agreement could not be achieved between the parties. LL have been consistently clear that we do not consider this to be the case and HNP's argument in this regard falls far short of establishing either that there is no realistic prospect of the proposed Grampian-style requirement being fulfilled or that there is any other material and unacceptable uncertainty inherent in the ExA imposing such a requirement.

2.2 From the start, LL have been at pains to make it clear that they wish to deliver the TWA scheme on the LL sites. This is not an academic exercise for LL, their interest is only satisfied if a commercial agreement is reached and the project constructed. A history of negotiations and L&L's ethos was provided at DL2 [REP2-222]:

"L&L made first contact with Horizon in June 2010 and worked closely with them to agree a commercial position for the use of Cae Glas & Kingsland sites for worker accommodation in line with our planning permission. The commercial structure was agreed and ready for Hitachi final approval in March 2016 at which time the senior leadership team changed and an 'optimisation' process was put in place to reduce the overall project costs. Subsequently their worker accommodation strategy changed to propose temporary accommodation in 5 & 7 storey blocks on the Wylfa site itself."

2.3 HNP raised this issue at the January ISHs and L&L's rebuttal and evidence as to L&L's own desire for a commercial agreement coupled with evidence in relation to the previously advanced negotiations is set out within paragraph 2.1.13 of L&L's DL4 submissions [REP4-036].

2.4 The ExA's attention is also drawn to [REP2-233] and [REP2-234] which again demonstrate the positive relationship between the parties during the earlier stages of negotiation.

2.5 Further commentary on this issue was provided at section 6 of LL's DL6 submissions [REP6-055] and the need for L&L to secure a commercial agreement was set out within L&L's DL5 response to the ExA's further written questions [see answer to Q2.10.9 within REP5-079]. In short, LL require an agreement with the developer in order to achieve any value from their sites and have every incentive to reach agreement. Terms were previously very close to agreement and there is no reason why an agreement cannot now be achieved. LL is far from being in any sort of 'ransom' position, as alleged by HNP. Indeed it needs the agreement in order to obtain any value from this site into which considerable funds have already been committed.

3. VIABILITY

3.1 LL have provided compelling evidence as to the viability of the scheme proposed. The ExA is respectfully referred to Section 2 within L&L's DL2 submissions [REP2-220] and the report of Arcadis on behalf of L&L [REP2-249].

3.2 L&L have always accepted that the cost of providing transport to workers would be an additional cost of the L&L scheme but consider this to be minimal both in absolute terms and when weighed against the potential extra costs associated with a likely under-used Site Campus which would generate high staff turnover and an adverse impact on the PRS and tourism sectors. The ExA is referred to Mr York's evidence in relation to transport costs which is summarised in [REP5-079] and within paragraph 2.1.5 of L&L's DL6 submissions [REP6-055].

3.3 LL's evidence is that the scheme can be delivered within the NAECl subsistence rates. This is supported by the order of costs estimate supplied by Arcadis for the development schemes proposed by LL which have been confirmed to fall within LL's budget aspirations to deliver the fully serviced provision based on the NAECl subsistence rates over a 5 year full occupancy programme.

- 3.4 In contrast, HNP have consistently declined to provide evidence to support their assertions that the LL scheme adversely affects the viability of the project as a whole. This has been requested both by L&L and by the ExA within their Rule 17 Question 17.2.4 to the Applicant but has not been provided by HNP. Commercial sensitivity is not an answer to this point; broad figures, cost estimates or redactions may be used to ensure no sensitive data is released. The MACE report relied upon by HNP has been fully addressed by LL [see REP6-055, LL response to HNP's answer to Q2.10.11]. In short, HNP have had a comprehensive professional rebuttal of this document since March 2017. The conclusion of LL's rebuttal, prepared by Edmond Shipway Construction Consultants, was that £10m of excess costs was more appropriate. No response to that rebuttal was ever received. Since that time, the emerging information on the HNP onsite campus suggests that mitigation measures for odour, noise and vibration and compensation for low occupancy would further reduce HNP's claim that the LL scheme is more expensive.

4. SECTION 106 AGREEMENTS

- 4.1 In its response, HNP asserts that should HNP utilise the LL development "*both the Horizon s.106 agreement and the existing LL s.106 agreement would need to be entirely renegotiated*". This is factually incorrect. We draw the ExA's attention to appendix 3 of LL's Deadline 2 submission [Rep2-246 and Rep2-247] and specifically the "Reassessment Procedure" contained at clause 9 of LL's S106, the purpose of which is to allow the need for future change due to the DCO. This was a deliberate flexible arrangement which was endorsed by IoACC and reviewed by HNP at the time.
- 4.2 In any event, it is always possible to vary agreements with the consent of the parties or enter into new agreements which supersede the original. The s.106 contributions are therefore not immoveable and, if necessary, could be revised to reduce HNP's concern about double counting of contributions. This is not a bar to the Grampian-style requirement.

5. WHETHER THE GRAMPIAN-STYLE REQUIREMENT PRODUCES A 'CHANGE' TO THE DCO

- 5.1 The ExA has each party's respective views and submissions on this matter. HNP continue to assert that the proposed mechanism amounts to a change in the DCO application. The Opinion of Mr Fraser-Urquhart QC explains why this is not the case. The ExA is respectfully referred to his Opinion at [REP8-076]. LL has considered the Opinion of Mr Humphries QC and does not consider that this alters the views and conclusions set out within Mr Fraser-Urquhart QC's Opinion, which should be preferred. Claims that this adds unacceptable uncertainty do not ring true, especially in light of HNP's proposed Grampian requirement to deal with the lack of funding in place.
- 5.2 In any event, as the Opinion of Mr Humphries QC confirms, it is entirely possible for a DCO to be 'changed' provided the principles of fairness as contained within Wheatcroft are considered and applied. As LL submitted at the ISHs in January, summarised at Sections 2 and 4 within [REP4-036], the TCPA consent obtained by LL was obtained following a thorough consultation exercise, interested parties to the DCO have been consulted on the LL scheme within PAC1 and PAC2 and LL's position has been clear and public throughout the Examination, with other parties able to comment at all stages. Further, any scheme submitted pursuant to the Grampian-style requirement would be subject to approval by the LPA and therefore one can reasonably expect there to be a further stage of consultation or engagement prior to approval.