From: [redacted]
To: Wylfa Newydd
Subject: EN010007 ERRATA: Comment on Responses to SoS consult231019 - jc110220
Date: 12 February 2020 18:00:00
Attachments: EN10007 proofed vers comment on responses to SoS 231019consultation jc120220.docx

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FAQ:

Gareth Leigh
Head, Energy Infrastructure Planning
Secretary of State for Business, Energy and Industrial Strategy
c/o the Planning Inspectorate

Dear Sir,

I'm obliged to draw to your attention the following proofing errors that escaped into my Comment date 11.02.2020, as emailed to the Planning Inspectorate yesterday evening.

For convenience, I also enclose a proofed version of my Comment, with the errors corrected. The full proofed version replaces the previous.

page 2, para.S.2.2: line 4 delete "complimentary" replace with "**complementary**"

page 6, para.S.6.1: line 4 delete "I" replace with "**in**"

page 11, para.S.23-24.2: line 2 after "**unfettered**", delete the following three words "in any respect"

page 13, para.S.36.3.1: in the third bullet point delete "for" replace with "**in**"

Thank you for your kind attention. My apologies for any inconvenience arising.

signed

J Chanay

Interested Party 20011605

----- Original Message -----
From: [redacted]
To: Wylfa Newydd
Sent: Tuesday, February 11, 2020 11:36 PM
Subject: EN010007 Comment on Responses to SoS consult231019 - jc110220

Gareth Leigh
Head, Energy Infrastructure Planning
Secretary of State for Business, Energy and Industrial Strategy
c/o the Planning Inspectorate

Dear Sir

Please find attached Comment on Responses to the Secretary of State's Consultation Letter dated 23.10.2019.

signed

J Chanay

Interested Party 20011605

EN010007 Comment on Responses to the Secretary of State's consultation letter dated 23 October 2019

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

proofed Version 12.02.2020

Summary

Equality of arms

This Comment is prepared in my capacity as Lay IP, lacking access to requisite expert resources in addition to pressing time commitments.

The Secretary of State's call for IP Comments: deadline count down confusion

In an undated letter (posted on the Planning Inspectorate's website on 24.01.2020), the Secretary of State's Office set a closing date of 11.02.2020 for Comments from Interested Parties on Responses to the Secretary of State's Consultation Letter dated 23.10.2019.

The Letter also stated the Applicant's Consultation Response was still incomplete, regarding relevant information. Further, according to the Consultation Responses from the Isle of Anglesey County Council and the Welsh Government, respectively, both Parties flagged up intention to provide relevant information on their respective outstanding issues by the end of January 2020.

Clarification regarding the deadline date was sought from the Office by email on 27.01.2020. Namely, procedurally and logically, wouldn't the 28-day clock for Comments from all Interested Parties start from the date all Consultation Responses were evidentially complete and available in entirety on the Inspectorate's website?

The Office had not replied by the close of 11.02.2020.

The Secretary of State's Consultation Letter dated 23.10.2019

Observation on the 6-month time limit on DCO Examination proceedings

The Secretary of State's letter raised 36 paragraphs on specific matters on which there was relevant information deficiency. The deficiency was identified after the closure of the DCO Examination on 23.04.2019.

The nature and scale of deficiency in the instance is clear demonstration that the 6-month period allowed under the PA2008 for a DCO Examination has proven inadequate. It begs a question as to whether, under the pressure of time, the Examining Inspectors were inevitably bounced into rushing the evidence gathering process.

Paragraph 2: **Licences and Consents (including Marine Licences and Operational Combustion Installations permits)**

S.2.1 The Applicant withdrew the following site specific Licence and Environmental Permits Applications (between 17.01.2019 and 14.02.2019), prior to the DCO Examination closure on 23.04.2019:

- Nuclear Site Licence for Wylfa Newydd (ONR);
- Nuclear-RSR Environmental Permit (NRW: EPR/EB3393NE);
- Environmental Permit for Operational Combustion Activities (NRW: PAN-002429); and,
- Environmental Permit for Operational Cooling Water Discharges (NRW: PAN-002427).

S.2.2 These withdrawals created a novel situation, cutting across interaction envisaged between the DCO planning consents regime and the separate regulatory consents regimes. To the extent EN-1 para.4.10.3 envisaged the regimes for DCO and regulatory consents operating complementarily, a salient question arises. Namely, were complementary regimes meant to operate/run synchronously or asynchronously?

a. If the former, does it mean contemporaneously, for the most part? In other words, the regulatory consents regimes running in parallel with the DCO consents regime.

b. If the latter, does it mean as randomly timed as an applicant desires? In other words, regulatory consents regimes running assuredly disjointed in time with the DCO consents regime.

This issue may have a bearing on the interpretation of relevant paragraphs in EN-1. The Applicant's Response (Further Information 24.12.2019: Table 1-1) cites EN-1, arguing in effect that the withdrawal of site specific licences and environmental permits is inconsequential for the purpose of the Secretary of State's determination of an Application for Grant of DCO for the proposed Wylfa Newydd Nuclear Power Station in Anglesey. The relevant paragraphs in EN-1 are explored below.

S.2.3 According to EN-1 para.4.10.3,

> "…The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them."

Construed properly, is it not the sense of the last sentence that the DCO Examining Authority (ExA) could safely proceed as per the assumption in the preceding sentence if, and only if, all relevant regulatory consents were also undergoing assessment in parallel with the DCO consents Examination? Was that the policy basis for stopping an ExA from also assessing evidence on matters pertinent to the separate regulatory consents regimes?

S.2.4 According to EN-1 para.4.10.6,

> "… Wherever possible, applicants are encouraged to submit applications for Environmental Permits and other necessary consents at the same time as applying to the IPC for development consent."

This clearly emphasises preference for synchronicity. In the instance, the Applicant began all applications on synchronous footing but severed synchronicity amid-stream, as it were, in respect of assessments of regulatory consents (para.S.2.1, above referring).

S.2.5 According to EN-1 para.4.10.5,

> "…In considering the impacts of the project, the IPC may wish to consult the regulator on any management plans that would be included in an Environmental Permit application."

This could only be practicable under synchronicity. In the instance, the Applicant's abandonment in particular of site specific applications for a Nuclear Site Licence and Environmental Permits under the Radioactive Substances Regulations abruptly arrested the relevant regulatory consents assessments, in the middle of the DCO Examination proceedings. The effect was to deprive the ExA options and opportunity afforded under EN-1 para.4.10.5. This, in turn, created a novel situation: arguably a potential lacuna in material evidence on environmental impact assessments envisaged under EN-1 paras 4.10.3 and 4.10.7, respectively.

S.2.6 According to EN-1 para.4.10.7,

> "The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. Working in close cooperation with EA and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, the IPC should be satisfied, before consenting any potentially polluting developments, that:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and

- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits."

A pertinent question arises. Does abandonment amid-stream of regulatory assessments into site specific NSL and EP-RSR applications hinder or uphold the operational meaning and intent of the opening sentence (namely, "The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. …"), and the phrase preceding the bullet points above (namely, "the IPC should be satisfied, before consenting any potentially polluting developments, …").

Arguably, on the face of it, abandonment amid-stream would appear tantamount to active hindrance, resulting in manifest frustration of the operation of EN-1 para.4.10.7.

S.2.7 The Applicant's Response in Table 1-1 states:

> "…All permits required to operate the Wylfa Newydd DCO Project will be sought in due course following the restart of the Wylfa Newydd DCO Project. Those operational permits will contain all appropriate and necessary controls to address the impacts of the Wylfa Newydd DCO Project that would normally be controlled through such permits."

With respect,

a. the first sentence above severs implied synchronicity under EN-1 between DCO planning assessments and regulatory assessments, and which the Applicant had honoured to begin with. Further, the Applicant has not identified indicative dates either on renewal of applications for abandoned regulatory consents.

b. The thrust of the second sentence is surely a prerogative of regulators, as underscored in EN-1 para.4.10.7. The Applicant's act of abandoning amid-stream the regulatory site specific assessments severed the material evidence pipeline into the DCO Application Examination. The Examining Authority's access pipeline to regulatory judgement on relevant evolving consents assessments was cut off. That runs seemingly contrary to the framework in EN-1.

S.2.8 According to EN-1 para.4.10.8,

> "The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted."

In the instance, it is difficult to see how severance amid-stream of access to regulatory judgement on relevant evolving consents assessments could mean anything other than that the DCO Examining Authority was no longer in a position to request updates and letters of comfort from either the NRW or the ONR on prospect of grant of relevant necessary site specific operational pollution control permits or licences or other consents. It is arguable, in turn, that on the balance of probabilities it remains questionable whether the Secretary of State may indeed possess the requisite degree of certainty envisaged in EN-1 para.4.10.7.

S.2.9 As illustration, the significance of abandonment of regulatory assessments (and, therefore the operation of EN-1 para.4.10.7) may be gleaned from shortcomings in the Applicant's original Application to the NRW in November 2017, for a site specific Nuclear-RSR Environmental Permit (NRW: EPR/EB3393NE). The Applicant withdrew this application on 14.02.2019. The following examples of gaps in regulatory information in the Permit Application are not meant to be comprehensive:

- exact specification of sampling and monitoring equipment, and the techniques employed;

- consistency of sampling and monitoring systems with BAT;
- monitoring systems and services that meet EA/NRW performance specifications;
- fitness to proceed with activities where there is significant uplift in risk;
- equipment and arrangements proposed for the sampling, monitoring, and analysis of radioactive gaseous, aqueous, and solid waste discharges and disposals from the Power Station that represent BAT (FARSR-3);
- radiation threshold levels for the Reactor Building stack gaseous discharge monitoring system, above which an alarm would be triggered, as well as response procedures to such an alarm (FARSR-5);
- lack of BAT cases for the design and intended operation of the Power Station facilities that will generate, process, store and dispose of solid, aqueous and gaseous radioactive wastes. These included the Lower Activity Waste Management Facility, Intermediate Level Waste Storage Facility, and Spent Fuel Storage Facility (FARSR-10);
- safe management of failed fuel in the Spent Fuel Pool (FABC-1);
- a prospective direct shine dose assessment of the Spent Fuel Storage Facility, to ensure that it does not undermine (from a dose perspective) the concept of ALARA (FABC-6);
- details of solid radioactive waste monitoring and sampling arrangements that will be adopted;
- lack of independent continuous monitoring system to enable the Regulator to collect gaseous and aqueous effluent samples.

S.2.10 According to the ONR Response 19.12.2019, the Applicant withdrew an application for a Nuclear Site Licence for the Wylfa Newydd site on 17.01.2019. This arguably deprives the Secretary of State, when determining the DCO Application in accordance with EN-1 para.4.10.7, of regulatory assurance and requisite degree of certainty based on ONR assessment of safe and secure operation of the twin UKABWRs and all other nuclear materials facilities, as specifically configured and design-adapted for the site at Wylfa in Anglesey. The ONR Generic Design Assessment (concluded in December 2017) was not site specific. On a related matter, there has been no clarity to date on whether the Applicant continues to qualify as a Credible Nuclear Power Operator despite cancelling the application for a Nuclear Site Licence. Is there any implication for the Applicant's fitness to be granted a DCO for a new nuclear power station, under the circumstances?

S.2.11 Following the withdrawal of both the EPR and NSL applications, on the balance of probabilities, the Secretary of State may not necessarily possess requisite degree of certainty on relevant regulatory site specific assessments of radiation dose exposures and environmental impacts on Natura 2000 sites, from both routine and severe reactor accident events. Neither matter was subject to detailed examination during the DCO Examination proceedings, apropos EN-1 para.4.10.3 exclusion. Relevant site specific regulatory assessment evidence regarding radiation exposure doses, radioactive waste discharges, severe reactor accident impacts does not appear to have been admitted into the DCO Examination. On that basis, following the withdrawals, the reason for continuing conditional exclusion under EN-1 para.4.10.3 could be said to have been frustrated in practice.

S.2.12 In another example, the Applicant's Response Table 1-1 claims its worse case scenario modelling of nitrogen deposition and acidification of vegetation as a result of emissions from Operational Combustion Installations demonstrates that reasonable mitigation of impacts of nitrogen deposition is achievable. In contrast, the NRW Response 20.12.2019 informs that at the time the Applicant withdrew its Environmental Permit for Operational Combustion Activities, impacts assessment indicated high likelihood of net loss of nitrogen tolerant species

in the Cae Gwyn SSSI (para.6.6). Furthermore, that it was difficult to see prospects of replacement of this unique habitat in the foreseeable future in the Area of Search.

S.2.13 In summary, to the extent the interpretation of EN-1 above is even partially sound, it would be rational to invite the Secretary of State to consider two options, thus:

a. refuse to Grant the Development Consent Order sought by the Applicant, for example, by reason of acute frustration of EN-1 para.4.10.7; or

b. defer the decision on the DCO Application until such date as the Applicant resuscitates all withdrawn environmental permits, including applications for EP-RSR (with the NRW) and the NSL (with the ONR); and, assessments by both regulators have reached a sufficiently advanced stage that places the regulators in a position to provide the Secretary of State the requisite degree of certainty (express and implied) under EN-1 para.4.10.7. The Secretary of State could at that point also consult afresh with all IPs on relevant matters, prior to proceeding to final determination of the Application for a Grant of DCO for Wylfa Newydd.

Paragraph 4: **Representations of the Government of the Republic of Ireland under the Espoo Convention**

S.4.1 It is noted that the Commission Opinion of 4th June 2018 under Article 37 of the Euratom Treaty was apparently based on "General Data", not site specific considerations. That is plain from the text reproduced in the Applicant's Response (Further Information 24.12.2019: Table 1-1, page 7). In that context, does the Applicant's abandonment of site specific assessments of applications for a Nuclear NSL and RSR Environmental Permits have material bearing on transboundary impacts consultation? The NRW Response 20.12.2019, para.2.1 referring, for example.

Paragraph 6: **Imperative Reasons of Overriding Public Interest**

S.6.1 Comments in REP9-048 (section 9.5) and REP10-070 (section 10.7.3) are maintained as regarding the Applicant's Response (Further Information 24.12.2019: Table 1-1, sub-paragraphs i. and ii, respectively, on page 16). Comment bearing on the Applicant's assertion in sub-paragraph iii, follows.

S.6.2 Comment below remains constrained due to pressing time commitments and lack of access to expert resource capacity, as Lay IP. It has not proven practicable either to review properly the Applicant's rank dismissal of alternative solutions in REP5-044, or to consider in detail the Applicant's Response to Paragraph 6 in its entirety.

S.6.3 The NRW Response 20.12.2019 informs (para.5.5) that there exists reasonable scientific doubt on integrity of the Anglesey Terns SPA as a result of the combined visual disturbance and noise stimuli from onshore as well as marine construction activity. With construction activity stretching over a period of at least nine years, there exists heightened risk of colony abandonment and other adverse impacts on breeding/nesting/feeding/flying-up behaviour of the Tern species.

a. According to NRW assessment (para.5.3), feasible mitigation proposed by the Applicant fails to "demonstrate, beyond reasonable scientific doubt, that there would be no adverse effects on the Anglesey Terns SPA."

b. In consideration of the Advice by the NRW to the ExA on Horizon's Tern Compensation Proposal (REP10-035: Annex A), it is respectfully submitted that it is quite questionable whether it can be guaranteed that any of the four proposed compensatory sites would indeed develop as theorised and envisaged into ecologically suitable, sustainable or viable longer term habitats for the terns. In addition to uncertainty over successful

outcome, there arises uncertainty over climate change resilience of each site, and over how the sites might be affected under future development plans and programmes.

In view of real risk of colony abandonment by the Tern species at the Cemlyn Bay SPA, as well as inherent uncertainty on longer term viability of the ecological compensatory sites as suitable alternative habitats, it is difficult to surmise how IROPI justification could be properly founded.

S.6.4 Should the Secretary of State nevertheless be minded to rule in favour of IROPI justification, the Secretary of State is respectfully invited to secure from the Applicant legally enforceable guarantees ensuring leases on all four compensatory sites for the Anglesey Terns SPA run conterminously with the conclusion of final dismantlement and removal of radioactive waste interim storage facilities comprising Buildings 9-201 and 9-202, respectively, as well as complete final site restoration. That may be realised by 2187, subject to availability of a reliably operating geological disposal facility somewhere in the UK for the contents of Buildings 9-201 and 9-202. The reasoning is as follows.

a. Disturbance cessation?

Completion of main on-shore and marine construction works does not mean permanent cessation of combined

- visual disturbance (on-site lighting; and, routine movements of cargo, inspections, maintenance, refurbishment, servicing, supply, staff/visitor and waste transport vehicles, for example)

- and noise stimuli (from the 24/7/365 routine operation of facilities across the entire WNDA site; as well from routine use of cargo, inspections, maintenance, refurbishment, servicing, supply, staff/visitor and waste transport vehicles and associated activity, for example).

b. Applicable legal test

The NRW Response 20.12.2019 references in para.5.4 a legal test formulated by the European Court of Justice (Case C-127/02, *Waddenvereniging and Vogelbeschermingsvereniging*), bearing on European protected sites. Namely, that "there should be no reasonable scientific doubt about the absence of adverse effects on the European protected site, applying the precautionary principle." Arguably, the ECJ legal test would continue to apply equally and without discrimination throughout the entire post-construction phases as well, up to and including full decommissioning, complete dismantlement and removal of all facilities/structures, and final complete site restoration.

(i) Likelihood of prolonged disturbance signals

According to the NRW Response 20.12.2019 (para.5.5), there exists reasonable scientific doubt on integrity of the Anglesey Terns SPA as a result of the combined visual disturbance and noise stimuli from onshore as well as marine construction activity. It follows reasonably thereupon that unless all visual disturbance and noise stimuli were miraculously to disappear altogether throughout the post-construction operational and subsequent decommissioning phases, reasonable scientific doubt about the absence of adverse effects on integrity of the Anglesey Terns SPA would continue to prevail and could not be ruled out. Heightened risk of colony abandonment and other adverse impacts on species behaviour would continue to persist. In other words, the NRW assessment of significant scientific doubt "that a conclusion of no adverse effects on site integrity of the Anglesey Terns SPA cannot be reached" may arguably continue to persist beyond the end of construction period: spanning the entire operational phase through to final dismantlement of all facilities and eventual site restoration in every part of WNDA.

(ii) Prolonged disturbance determinants

According to the Applicant's Response to Paragraph 4 (Further Information 24.12.2019: Table 1-1, page 10), decommissioning of the WNDA site is expected to conclude in 2187. That being so, implied real risk of adverse effects on site integrity of the Anglesey Terns SPA could in turn persist until 2187 as a result of:

- continuing visual disturbance arising from on-site lighting; and, routine operational activity including movement of cargo, inspections, maintenance, refurbishment, servicing, supply, staff/visitor and waste transport vehicles: across the entire WNDA site, inclusive of Buildings 9-201 and 9-202;

- continuing noise stimuli arising from the 24/7/365 routine operation of facilities across the entire WNDA site, including Buildings 9-201 and 9-202; as well from routine use of cargo, inspections, maintenance, refurbishment, servicing, supply, staff/visitor and waste transport vehicles and associated activity;

- activity involved in the construction of Buildings 9-201 and 9-202, subsequent to commencement of operation of the twin UKABWR nuclear generating station;

- activity involved in the decommissioning and dismantlement of power station facilities and structures, following end-of-life permanent shutdown of nuclear reactors;

- activity involved in on-going maintenance and refurbishment of Buildings 9-201 and 9-202 as warranted (ensuring safe and secure storage integrity of accumulated radioactive waste), subsequent to dismantlement of all power station and associated structures. Buildings 9-201 and 9-202 would remain operational until such time as the entire contents of these facilities could be evacuated and removed for permanent disposal in a geological disposal facility elsewhere; and,

- activity involved in the complete decommissioning and dismantlement of Buildings 9-201 and 9-202 and all associated support structures, followed by final restoration of this part of the WNDA site. That may be achievable by 2187, depending on availability at the time of a suitable GDF in the UK possessing requisite emplacement capacity for permanent containment of the entire contents inventory of Buildings 9-201 and 9-202.

Given the combination of likelihood of on-going disturbance continuing to adversely affect the integrity of the Anglesey Terns SPA at Cemlyn Bay, and an absence of requisite degree of certainty on viability of all four compensation sites, the Secretary of State could reasonably be expected to accept nothing less than conterminous leases on all four compensatory sites, expiring with the removal of Buildings 9-201 and 9-202 and complete final site restoration. Legal guarantees need to be in place prior to consent for commencement of any type of work on the WNDA, including SPC.

S.6.5 Comment in REP9-048 (sub-sections 9.5.5.3 and 9.5.6.3) warrants reiteration. By the close of the DCO Examination, the Applicant had not provided relevant information on genuine inquiry into availability or potential development of suitable alternative to on-site storage of higher activity radioactive waste (Buildings 9-201 and 9-202, respectively), whether from the outset or during the reactor operation phase or the post-reactor decommissioning phase. Under the circumstances, the Applicant could not be said to have demonstrated beyond reasonable doubt there is no reasonable alternative to on-site storage.

a. Alternatives to on-site storage would avoid prolongation of period of real risk to the integrity of priority habitats in the European Designated Sites Anglesey Terns Special Protection Area (SPA) and the Dee Estuary SPA: REP5-045 para.2.3.1.

b. Buildings 9-201 and 9-202, located in the south west corner of the WNDA, are the closest large industrial structures to the Anglesey Terns SPA at Cemlyn Bay. These

facilities constitute the nearest source of on-going disturbance signals well into the twenty second century, mitigation design efficacy of Mound E notwithstanding: para.S.6.4.(b).(ii), above.

Mitigation of Onshore Construction on Sandwich Tern

Paragraph 8: **Noise**
Paragraph 9: **Visual Disturbance**

S.8-9.1 In contrast to the Applicant's Response, the NRW Response 20.12.2019 informs (para.5.3) that feasible mitigation proposed by the Applicant fails to "demonstrate, beyond reasonable scientific doubt, that there would be no adverse effects on the Anglesey Terns SPA." Referencing the legal test formulated by the European Court of Justice (Case C-127/02, *Waddenvereniging and Vogelbeschermingsvereniging*), the NRW assesses there exists reasonable scientific doubt on integrity of the Anglesey Terns SPA as a result of the combined visual disturbance and noise stimuli from onshore as well as marine construction activity. Therefore, there exists heightened risk of colony abandonment and other adverse impacts on species behaviour (para.5.5).

S.8-9.2 The Secretary of State's attention is respectfully drawn to continuation of combined noise stimuli and visual disturbance beyond the end of the construction phase, the mitigation design efficacy of Mound E notwithstanding. The Applicant's Reponses to Paragraphs 8 and 9 do not address on-going disturbance signals persisting well beyond the end of the construction phase of the proposed power station *per se*. This failure is perpetuated in the Section 106 Agreement as well with the host Planning Authority.

S.8-9.3 The NRW assessment of significant scientific doubt "that a conclusion of no adverse effects on site integrity of the Anglesey Terns SPA cannot be reached" (Response 20.12.2019: para.5.5), could arguably continue to persist beyond the end of construction period: spanning the entire operational phase through to final dismantlement of all facilities and eventual site restoration in every part of WNDA.

S.8-9.4 On-going disturbance signals could potentially persist until 2187, when the Applicant expects to conclude final site decommissioning (Applicant's Response to Paragraph 4, in Further Information 24.12.2019: Table 1-1, page 10). Prolonged disturbance determinants, capable of adversely affecting the integrity of the Anglesey Terns SPA, are enumerated in para.S.6.4.(b).(ii), above. It warrants noting that Buildings 9-201 and 9-202 are situated in close proximity to the Anglesey Terns SPA at Cemlyn Bay. These large imposing industrial structures are destined to remain in continuing operation until 2187, constituting the last structures to be decommissioned, dismantled and removed from the site, followed by final site restoration.

Paragraph 14: **Sites of Special Scientific Interest ("SSSI") Network**

S.14.1 It could not be acceptable for the Secretary of State to approve damage to any SSSI, resulting in net loss. The Applicant hopes the proposed compensatory sites may somehow make good some measure of net loss (Applicant's Response to Paragraph 14, in Further Information 24.12.2019: Table 1-1, pages 31-33). The reality is that however carefully managed, development of compensatory sites as substitutes is inherently and necessarily beset with considerable uncertainty. Compensatory sites are no substitute for habitat assemblages, characteristics and parameters that evolved at designated SSSIs on the WNDA site over the course of time since the end of the last ice age (~10,000 years ago).

S.14.2 Net loss of unique habitats comprising the Tre'r Gôf SSSI and the Cae Gwyn SSSI, respectively, is unacceptable. Practical avoidance action lies clearly with the Applicant, enforceable under devolved jurisdiction as necessary.

a. As explained by the North Wales Wildlife Trust (eNGOs Response 12.12.2019: Question 10 on page 8), relocating the Temporary Workers Accommodation (4,000 person unit) elsewhere would remove the direct threat not only to Tre'r Gôf SSSI but to the breeding and foraging choughs at Wylfa Head as well. The Secretary of State should require this under any Grant of DCO in the instance.

b. Considering the niche level nature of damage from nitrogen deposition at the Cae Gwyn SSSI, the Applicant should be required to go further than BAT to eliminate/capture nitrogen discharges from all operations and sources on the WNDA site. The Secretary of State should require this under any decision to Grant the DCO.

c. It is imperative to secure the integrity of unique and irreplaceable habitats at these two SSSIs, as detailed in the NRW Response 20.12.2019 (paras 6.1-6.6). On ecological merit and principles, these two SSSIs in particular warrant insulating from any sacrifice under IROPI justification. The Secretary of State is respectfully invited to ensure this, along the lines suggested above, if minded to Grant the DCO sought by the Applicant.

S.14.3 With respect, the Applicant's Response argument on "Balancing impacts with the benefits of the Wylfa Newydd DCO Project" continues to skate on highly questionable footing. The Applicant seemingly displays persistent blindness to relevant change in circumstances that has been developing over the past eight years, in the economics of the energy market and the power generating sector in the UK. That change developed in the aftermath of Parliament's approval of Government policy on promotion of need for new nuclear power stations under the 2011 National Policy Statement EN-6. The Applicant's persisting evasion remains baffling. Particularly, given that the Secretary of State's Nuclear Update statement to Parliament on 17 January 2019[1] emphasised clearly the relevant change in circumstances manifesting over the past eight years. The Applicant has yet to adjust any forecast need for nuclear new build accordingly from 2025 onward, under markedly different evolving energy landscape. Comment in REP9-048 section 9.5.7.3 is maintained.

Water Framework Directive

Paragraph 15: **Mitigation**
Paragraph 16: **Derogation**

S.15-16.1 The Secretary of State is respectfully invited to ensure that any decision on the Applicant's Application for a Grant of DCO for Wylfa Newydd does not transgress in any manner into the separate territory of devolved Marine Licensing jurisdiction in Wales, regarding all matters for determination appertaining to the Water Framework Directive.

S.15-16.2 It is imperative that devolved authority is seen to be respected and seen to work. In the instance, matters involving the Water Framework Directive should revert duly to devolved jurisdiction in entirety, for separate determination by relevant competent authority. Devolved control should rest in devolved jurisdiction.

Flooding

Paragraph 17: **Flood risk – Exception test**
Paragraph 18: **A5025 Off-line Highways Improvements – TAN15**
Paragraph 19: **A5025 Off-line Highways Improvements – compensatory storage**
Paragraph 20: **Ecological Compensation Sites**
Paragraph 21: **Dalar Hir Park and Ride**

[1] Hansard HC (2019) Nuclear Update. Statement by The Secretary of State for Business, Energy and Industrial Strategy. House of Commons Hansard, Volume 652, 17 January 2019. Available at: https://hansard.parliament.uk/Commons/2019-01-17/debates/9C841326-B63A-4790-867F-905DEDDDD8AC/NuclearUpdate#contribution-AB1CF541-F832-4465-A6BE-437CE42EB8C3

S.17-21.1 The Secretary of State should ensure all these matters revert duly to devolved jurisdiction for appropriate determination, separately from the DCO. It is not at all desirable for a 21st Century Secretary of State to transgress into devolved territory on any matter. Particularly not on planning matters that engage detailed local knowledge and sensibility.

Historic Environment

Paragraph 22: **Archaeology**
Paragraphs 23-24: **Schedulable monuments**

S.22-24.1 Matters under these Paragraphs fall properly within the ambit of devolved jurisdiction. Relevant consents are best determined, authorised, monitored and enforced directly under well established and fully competent devolved authority in Wales. The Secretary of State is respectfully invited to strike out the inclusion of all archaeological matters under any Grant of DCO. The Secretary of State should ensure respective particulars bundled by the Applicant into the DCO Application revert duly to devolved jurisdiction for appropriate determination.

S.23-24.2 Devolved authority matters immensely in any modernising democracy and must be seen to be duly practiced, unfettered. Moreover, it is undesirable for a 21st Century Secretary of State to transgress into devolved territory under this DCO Application.

Paragraph 25: **Requirement SCP8 Archaeological Written Scheme of Investigation**

S.25.1 SPC Work No. 12 has crept into the DCO as a direct result of active gaming of planning jurisdictions by the Applicant. The SPC8 Requirement is part of a suite of thirteen Requirements under the development element dubbed SPC Work No. 12 (WNDA) in the Applicant's DCO Application.

S.25.2 The Secretary of State is respectfully invited to defer to devolved planning jurisdiction and revert the determination of consents on the entire SPC Work No. 12 and components, including SCP8 Written Scheme of Investigation, to devolved planning authorities for separate due determination, albeit in-tandem with the Secretary of State's determinations on strictly DCO planning elements.

S.25.3 The reason turns on apparent gaming of planning jurisdictions merely because the Applicant's SPC Planning Application had properly been Called-In by the Welsh Ministers for determination under devolved provisions of the TCPA 1990.

a. The Applicant initially submitted a Planning Application 38C310F/EIA/ECON for SPC Works to Anglesey Council on 9th November 2017, under the devolved TCPA 1990. That triggered an initial request to Welsh Ministers to Call-In the Planning Application. The Applicant subsequently submitted a revised Planning Application to Anglesey Council on 6th June 2018, triggering a renewed request to Welsh Ministers to Call-In the Application. At that point, the Applicant neither withdrew nor cancelled the Planning Application for SPC Works.

b. The Isle of Anglesey Planning and Orders Committee granted the Applicant Planning Permission for the SPC Works on 3rd October 2018. That consent pre-dated commencement of the separate DCO Examination on 24th October 2018 (the First Issue Specific Hearing). The record of the Planning and Orders Committee shows clearly both the Applicant and the Council were aware the Welsh Government had received Call-In requests [2]. Yet the Applicant once again took no action at the time on possibility of Call-In. The Call-In Decision was issued on 13th December 2018, activating a penultimate

[2] pages 10 and 61, in: Agenda Item 3. Planning and Orders Committee. Minutes of the special meeting held on 5 September 2018. Public Document Pack. Isle of Anglesey County Council.

stage in the devolved planning appeals process. Up until then, the Applicant appeared content with actively progressing through devolved determination proceedings.

c. In response, instead of continuing to see the process to completion, the Applicant jettisoned the SPC Planning Application in an unseemly act of gaming planning jurisdictions amid-stream. That drove a coach and horses through legitimate public expectation of detailed scrutiny of the Applicant's proposed SPC Works at a public local planning inquiry, in the next stage of the devolved process. In other words, the devolved statutory determination process commenced by the Applicant at the outset, without any reservation, was all of a sudden frustrated from proceeding to conclusion at the Applicant's whim.

S.25.4 The effect of frustrating devolved due process amid-stream is that it delegitimises devolved function, setting a bad precedent. It sends a powerful signal to other large infrastructure developers. The casual dismissal of the authority of Welsh Ministers is damaging to the proper and legitimate functioning of devolved authority. Other global conglomerates will no doubt note the ease with which the Applicant sidelined amid-stream a properly established devolved statutory planning determination process.

S.25.5 It is imperative to abide by constitutional legitimacy of devolution. It is wholly one sided to endorse twin tracking of some matters under the DCO and reject twin but separate jurisdiction determinations on significant planning matters. There is nothing to fear from separate determination under devolved jurisdiction. Constitutionally, the UK national interest should not preclude in-tandem devolved planning determinations on sizeable components of a large infrastructure project such as the proposed nuclear power station in Anglesey.

S.25.6 The Secretary of State should be loath to rubber stamp gaming of planning jurisdictions amid-stream. That would set another poor precedent. The effect of determination of SPC Work No. 12 or its components under the DCO Application would be to approve and legitimise delegitmisation of devolved function in this particular instance, to satisfy the Applicant's desire. This saga of planning consents for SPC Works appears to be a case of corporate desire trumping devolved jurisdiction, with devolution seemingly a football in the corporate boardroom. The saga shows up as well a messy interaction between the PA2008 and the devolved TCPA1990, handing bit parts to fully competent devolved authorities.

S.25.7 As with Marine Works, the Secretary of State is respectfully invited to strike out all SPC Works included by the Applicant in the DCO Application. Earlier Comments in REP6-053 (section 6.7.8) and REP10-070 (sections 10.7.2.1 and 10.7.2.4, respectively) on SPC Work No. 12 (including all components) are also maintained.

Traffic and Transport

Paragraph 26: **Turning Head**
Paragraph 28: **Fly Parking**
Paragraph 29: **Dalar Hir**

S.26-29.1 Determinations on all these matters fall properly under devolved jurisdiction. The devolved administration in Wales is a Statutory Highways Authority in its own right. The devolved authorities in Wales are clearly better equipped than the Secretary of State to determine appropriate local planning issues and matters.

Paragraph 30: **Abnormal Indivisible Loads**

S.30.1 This matter also falls for determination under devolved jurisdiction, either as a component of SPC Works or under the jurisdiction of the Statutory Highways Authority in Wales.

Paragraph 36: **Welsh Planning Policy & Climate Emergency Declaration**

S.36.1 It remains questionable whether the Welsh Government's Draft National Development Framework (dNDF) or the Welsh Government Cabinet Statement on Climate Emergency Declaration (CED) constitutes material or substantive additional or new evidence meriting due consideration under section 105 of the PA2008. The two documents are discussed in turn, below.

S.36.2 The Welsh Government's Draft National Development Framework (7 August 2019)

S.36.2.1 The Welsh Government Response 20.12.2019 to Paragraph 36 asserts that the dNDF "should be considered in the determination of the application" for a Grant of DCO for the proposed Wylfa Newydd Nuclear Power Station. However, the Welsh Government has not explained the basis on which it would be proper to do so.

S.36.2.2 In fact, the dNDF evidently has not yet been duly scrutinised by the Business Committee of the National Assembly for Wales[3]. In that light, it remains questionable whether the dNDF could properly be said to qualify as material consideration under PA2008 section 105, let alone merit any weight as asserted in the Isle of Anglesey Response 20.12.2019 to Paragraph 36. The dNDF would not appear to have current standing as a statutory planning policy document in Wales.

S.36.2.3 While the dNDF identifies the Welsh Government's political support for Wylfa Newydd, primarily as regarding potential legacy benefits in the form of "significant employment, training and other associated economic benefits across the whole region" (proposed Policy 22), there is neither any mention nor evaluation of any potential legacy disbenefit or requisite policy proposal in that regard.

S.36.2.4 The Applicant's Response to Paragraph 36 (Further Information 24.12.2019: Table 1-1, pages 60-61) appears to crave corporate desire for stronger political declarations from the devolved administration on nuclear new build. On the other hand, ironically, the Applicant recoils from the prospect of devolved planning jurisdiction determining consents for site preparation and clearance for nuclear new build: see paras S.25.3 and S.25.4, above.

S.36.2.5 In nutshell, whatever final shape Policy 22 takes, it could only govern developments falling within devolved planning jurisdiction. Any nuclear new build proposal with generating capacity in excess of the 350MW threshold set under the PA2008 (as amended[4]) comprises non-devolved development.

S.36.3 Climate Emergency Declaration by the Welsh Government Cabinet (29th April 2019)

S.36.3.1 The Written Statement from the Welsh Government Cabinet[5] identifies neither new resources nor new policy on how the Government proposes to tackle this "Emergency". The Declaration fails to identify:

- what urgent action the Welsh Government took immediately;
- what Wales would look like at the end of the Emergency; and,
- what indicators would be employed in determining how and when the Emergency ends.

To that extent, the Welsh Cabinet's Climate Emergency Declaration would appear to introduce little, if any, new material or substantive evidence for the Secretary of State's consideration

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3 Conclusion 51 in: CCERAC (2019) Report on the draft National Development Framework Climate Change, Environment and Rural Affairs Committee. National Assembly for Wales, December 2019. Available at: https://www.assembly.wales/laid%20documents/cr-ld12931/cr-ld12931-e.pdf

4 sub-section 39(4) of the Wales Act 2017.

5 WG Cabinet (2019) Written statement: Welsh Government declares Climate Emergency Cabinet statement, 30 April 2019. Available at: https://gov.wales/written-statement-welsh-government-declares-climate-emergency

under section 105 of the PA2008. In any case, the Welsh Climate Emergency Declaration has effect only on devolved matters. The DCO consent for Wylfa Newydd is not devolved.

S.36.3.2 The Declaration references Welsh Government strategy "Prosperity for All: A Low Carbon Wales" (published in March 2019[6]). However, the Cabinet Statement neither adds to that Strategy nor elaborates it further.

a. While the Strategy expresses support for the Wylfa Newydd DCO project, it adds virtually nothing to representations already made by the Welsh Government to the Wylfa Newydd DCO Examining Authority by the close of the DCO Examination on 23rd April 2019.

b. The Strategy "Ambition" for the power sector (page 65) envisions low carbon electricity comprising the main source of energy in Wales. Nuclear new build is demarcated as part of the UK energy supply mix. Nothing new there, then.

c. Nevertheless, the Ambition under devolved powers is not clear as to the level of nuclear contribution to electricity need in Wales.

d. Policy 34 likewise fails to identify the contribution of the proposed Wylfa Newydd DCO nuclear power station to the electricity need in Wales. Consent for the DCO project is not devolved. Policy 34 sidesteps the issue, framing instead expectations constrained to employment and training, "and a major legacy of benefits to Wales". However, the Policy fails to characterise the putative benefits in question, and remains inexplicably silent on any legacy of disbenefits for future generations. Such as,

   (i) the creation of very large quantities of higher activity radioactive waste, adding to the existing and currently growing legacy of accumulated nuclear waste to date. The creation, discharge, disposal and emission of radioactive waste do not magic nuclear power stations into clean energy producers.

   (ii) Both the UK and the Welsh Governments have yet to prove the legacy nuclear waste can be environmentally safely contained and isolated both from surface and geosphere biospheres beyond reasonable doubt for the indefinite future: the test set by the 1976 Royal Commission on Environmental Pollution[7].

   (iii) The Welsh Low Carbon strategy shies away from assessing whether the creation of additional legacy nuclear waste is avoidable, essential or necessary for Wales (and/or, indeed the UK) to achieve low carbon electricity generation targets.

e. Policy 34 does not evidence analysis of non-renewable energy need in Wales (or, the UK).

S.36.3.3 The Welsh Government Response 20.12.2019 to Paragraph 36 restates conditional support for Wylfa Newydd, but neither identifies nor provides updates on urgent action taken since making the Climate Emergency Declaration. For example, in respect of achieving a carbon neutral public sector by 2030. The Response does not explain either the material relevance of any devolved action by the Welsh Cabinet in Wales on energy security and the decarbonisation agenda, for the Secretary of State's deliberations on a non-devolved DCO for a new nuclear power station in Anglesey, other than simply citing PA2008 section 105.

S.36.3.4 The Applicant's Response to Paragraph 36 (Further Information 24.12.2019: Table 1-1, pages 61-62) points to its in-house DCO Carbon and Energy Report (APP-423), which is not an independent carbon footprint assessment of Wylfa Newydd.

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6 Available at: https://gweddill.gov.wales/docs/desh/publications/190321-prosperity-for-all-a-low-carbon-wales-en.pdf

7 RCEP (1976) Nuclear Power and the Environment. Royal Commission on Environmental Pollution, Chairman Sir Brian Flowers. Sixth Report. Cmnd 6618. HMSO. See Recommendation 27:
'There should be no commitment to a large programme of nuclear fission power until it has been demonstrated beyond reasonable doubt that a method exists to ensure the safe containment of long-lived highly radioactive waste for the indefinite future.'

a. The Applicant argues its in-house Report "complies with" the Welsh Cabinet's Climate Emergency Declaration but doesn't explain how a project currently suspended indefinitely could be compliant with emergency action. Nor has the Applicant provided disaggregated data used in compiling the Carbon Report, as requested and discussed in REP7-036 section 7.5.2, and in REP10-070 section 10.7.7, respectively.

b. The Applicant is generally appreciative of the Welsh Government's strategy on Prosperity for All: A Low Carbon Wales. Please refer to para.S.36.3.2, above, for comparative Comment.

c. The Applicant claims the UK's Committee on Climate Change advised in their May 2019 Net Zero Carbon UK Report, "that the ability to reduce electricity emissions close to zero would require the sustained and increased deployment of renewables and nuclear projects." With respect, this claim misrepresents the Committee's statement on page 145. The phrase "sustained and increased deployment" in the Report refers to renewables not nuclear projects. Here are a few actual extracts from the Committee's Report[8], not acknowledged by the Applicant:

- there have also been technologies that played significant roles in the Committee's UK scenarios in 2008 that have under-performed, either as projects have been delayed and costs have overrun (e.g. nuclear): page 46;

- Renewable generation could be four times today's levels, requiring a sustained and increased build out between now and 2050, complemented by firm low-carbon power options such as nuclear power and CCS (applied to biomass or gas-fired plants): page 145;

- nuclear power has failed to come down in cost as low-carbon technology and is not easily deployable at scale: page 217;

- we take a cautious approach in limiting the share of variable renewables in our scenarios to under 60%, even though they are the cheapest generation options. If higher renewable shares were possible, this would likely reduce system costs, given the lower costs we expect for renewables compared to nuclear and CCS: pages 252-3.

d. Moreover, the Applicant maintains silence on the relevant change of circumstance that has been unfolding over the past eight years, in the economics of the energy market and the power generating sector in the UK, which the Secretary of State emphasised in the Nuclear Update statement to Parliament on 17 January 2019, and which impacts nuclear new build expectations under markedly different evolving energy landscape (see as well para.S.14.3, above).

S.36.3.5 In nutshell, the Climate Emergency Declaration would not appear to fetch significant new material or substantive information under PA2008 section 105. Other than comprising tremendous early virtue-signalling kudos for the Welsh Government Cabinet, the Declaration remains opaque on action and mobilisation of requisite resource on urgent footing.

Paragraph 37: **Design and Access Statement**

S.37.1 This matter is best considered under separate devolved Marine Licence determination by the NRW. The Secretary of State is respectfully requested to revert the issue to devolved jurisdiction for proper determination.

[8] UKCCC (2019) Net Zero: The UK's contribution to stopping global warming. UK Committee on Climate Change, May 2019. Available at: https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

Paragraph 38: **Marine Enforcement Authority**

S.38.1 According to NRW, CML1832 (Marine Licence) is still under devolved determination As such, the Secretary of State is respectfully requested to revert the entirety of consents for Marine Works, included by the Applicant in the DCO Application, for due determination under devolved jurisdiction. It could not be acceptable to replace the entire fully devolved jurisdictional function with merely a devolved enforcement duty. That damages and demeans devolved statutory competence in equal measure. In turn, that could not be said to bode well for public faith and trust in devolved planning function.

S.38.2 Comments in REP6-053 section 6.7.10 and REP10-070 section 10.7.2.3 are maintained.

***NB**: This Comment could not be proofed in time by the close of submission deadline.*

J Chanay
11.02.2020

***NB**: This is the proofed version of Comment submitted 11.02.2020.*
Date: 12.02.2020