

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

Written Representation submitted on behalf of Network Rail Infrastructure Limited

Planning Inspectorate Reference No: EN010007

Reference No. 20011596

1 Introduction

- 1.1 This written representation (**Written Representation**) is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Horizon Nuclear Power Limited (**Applicant**) for the Wylfa Newydd Nuclear Power Station Development Consent Order (**DCO**). The DCO seeks development consent for the authorised development described in Schedule 1 and any other development authorised by the DCO (**Proposed Development**).
- 1.2 Network Rail submitted a section 56 representation to the Examining Authority (**ExA**) on 10 August 2018 [**RR-089**].
- 1.3 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (**Network Licence**).
- 1.4 Network Rail does not object in principle to the DCO. However, Network Rail objects to the compulsory acquisition and extinguishment of its rights over its land and third party land on which it relies for the carrying out of its statutory undertaking.
- 1.5 In order for Network Rail to be in a position to withdraw its objection to the DCO, Network Rail requires:
- (a) agreement from the Applicant that the acquisition rights over operational land and third party land (including the extinguishment of any rights and restrictions on such land) is on terms agreed with Network Rail for the protection of its statutory undertaking, and that compulsory powers will not be exercised in relation to such land; and
 - (b) that sufficient protection for Network Rail's statutory undertaking is put in place for the carrying out of works over and/or in the vicinity of the operational railway.
- 1.6 Network Rail is hopeful that these concerns can be resolved during the course of the Examination but in the absence of an agreement that safeguards its interests, Network Rail, as an interested party, maintains its objection and reserves the right to be heard at any further issue specific hearings on the DCO.

2 NR's land interests affected by the DCO

- 2.1 Network Rail has interests in plots of land that are identified in the Book of Reference and the Land Plans submitted with the application for the DCO. They comprise three sites where Network Rail owns, lets or occupies the land namely Plots 407, 408 and 409 (**Plots**).
- 2.2 The Plots comprise a highway entrance to a rail freight facility owned by Network Rail (**Freight Facility**) part of which is leased by Network Rail to Direct Rail Services (**DRS**) for use as a nuclear loading facility (**DRS Lease**). In respect of this land, DRS and Network Rail, as owner of the rail freight facility and operator of the operational railway connecting to it, have rights of access. As such, the Plots comprise operational railway land required by Network Rail for the purposes of its statutory undertaking.

- 2.3 Powers are sought by the Applicant in relation to the Plots for the creation of a new four- arm roundabout and a new bypass connecting the A5 with the A5025 to the east of the existing A5/A5025 signalised junction and other associated development (Work No. 8 of the DCO) (**Highway Improvement Works**).
- 2.4 Network Rail and DRS must maintain access to the Freight Facility at all times. The Highway Improvement Works include the following works on land which includes the Plots: "*diversions or modifications (both temporary and permanent) of existing vehicle and pedestrian access routes*" (Schedule 1 to the DCO, 'Other Associated Development') and "*..temporary diversions... signal control, stopping up...*" (Part 2 of Schedule 5 to the DCO).
- 2.5 Network Rail cannot withdraw its objection to the DCO until it has secured agreement with the Applicant regarding the method and programme of construction of the Highway Improvement Works affecting its operational land, to ensure that Network Rail and DRS will have continuous, uninterrupted highway access over the Plots and so that the operation of the Freight Facility can continue without interruption.
- 2.6 Network Rail also considers that an appropriate Requirement should be added to Schedule 3 to the DCO which requires a construction management plan to be approved by the local highway authority and Network Rail before commencement of the Highway Improvement Works insofar as they affect the Freight Facility and Network Rail asks that the Examining Authority requests the Applicant to include such a Requirement in its next draft of the DCO.
- 2.7 The powers that are sought by the Applicant in respect of the Plots are as follows:
- Land to be compulsorily acquired by the Applicant – Plots 407 and 408*
- 2.8 The Applicant is proposing to compulsorily acquire the land and rights of Network Rail (pursuant to Articles 25 and 27 of the DCO) included in Plots 407 and 408, for the purposes of constructing the Highway Improvement Works.
- 2.9 DRS has been granted a lease in respect of all or part of Plot 407 (Network Rail is confirming title in relation to Plot 407) and Plot 408.
- Land to be temporarily possessed by the Applicant – Plot 409*
- 2.10 The Applicant is proposing to take temporary possession of the land and rights of Network Rail included at Plot 409, for the purposes of constructing the Highway Improvement Works.
- 2.11 The land included in the DRS Lease includes Plot 409.
- 3 Compulsory acquisition of rights over Network Rail and third party land in which Network Rail has an interest and appropriate agreements**
- 3.1 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of the Plots or the temporary possession of the Plots to carry out the Highway Improvement Works pursuant to the DCO and the Applicant should,

in Network Rail's opinion, negotiate with Network Rail and DRS to secure the rights it needs by private agreement.

- 3.2 Network Rail also considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that new rights and restrictions over railway land can be created without serious detriment to Network Rail's undertaking; and no other land is available to Network Rail which means that the detriment can be made good by them.
- 3.3 As referred to above, the exercise of the compulsory powers sought by the Applicant in respect of the Plots would lead to the removal of Network Rail's access to its operational land. Network Rail believes that a part of the Plots is currently public highway and the stopping up of the highway would result in the right to use the surface of the land reverting to the subsoil owner; namely Network Rail. In addition to powers to stop up part of the public highway, the Applicant seeks compulsory purchase powers over the land. The effect of the exercise of those powers would be to prevent the Freight Facility from operating while the relevant section of the Highway Improvement Works are carried out. Network Rail has no certainty that the access to the Freight Facility would be re-provided, as public highway, after the Highway Improvement Works have been completed or the relevant land returned to Network Rail or that the construction works will be carried out in such a manner that Network Rail and DRS will have unfettered and uninterrupted access to the Freight Facility. Further, the unfettered exercise of the compulsory acquisition powers could result in a ransom strip being created. Network Rail submits that it is not appropriate for the development consent order to provide the Applicant with powers that have such a severe adverse impact on an operational rail facility.
- 3.4 Network Rail is willing to engage with the Applicant in a collaborative way during the course of the Examination and to negotiate the necessary agreements that will provide the Applicant with the necessary rights over the Plots to enable the Highway Improvement Works to be carried out in accordance with the Applicant's timetable while safeguarding the operation of the Freight Facility and protecting Network Rail's statutory undertaking.
- 3.5 Those agreements could include a transfer of land that reserves appropriate rights to Network Rail or the grant of a licence to the Applicant to enable the Applicant to enter onto Network Rail's to carry out the Highway Improvement Works while preserving Network Rail's rights of access to the Freight Facility.

4 Protective Provisions

- 4.1 As referred to above, the Plots comprise the highway access to Network Rail's rail freight facility and operational railway and, as such, are operational land for Network Rail's purposes.
- 4.2 As Network Rail confirmed in an earlier submission to the ExA [**AS-029**], protective provisions for the benefit of Network Rail must be included in the DCO. In its submission, Network Rail provided a copy of the protective provisions that it requires to be included at Part 3 of Schedule 15 to the DCO (**NR Protective Provisions**).

Paragraph 22 of the NR Protective Provisions provide that the powers listed, which include compulsory land acquisition powers, shall not be exercised without Network Rail's consent. It is, Network Rail submits, essential that that paragraph is included in the NR Protective Provisions as it ensures that Network Rail's land is not compulsorily purchased and ensures that the Applicant works constructively with Network Rail to enter into the necessary agreements referred to at paragraph 3.5 above.

- 4.3 Network Rail will also require, by private agreement with the Applicant, that notwithstanding whether the NR Protective Provisions are included in the Order made by the Secretary of State or not, the NR Protective Provisions agreed between the parties during the course of the Examination will be complied with by the Applicant in any event.

5 Asset protection agreements

- 5.1 As the Plots are situated on operational land and in the vicinity of the operational railway Network Rail will not be in a position to withdraw its objection to the DCO unless sufficient protections are put in place for the carrying out of the Highway Improvement Works.

- 5.2 In respect of all of these works, Network Rail requires asset protection agreements to be put in place to secure:

- (a) that no works shall be carried out without Network Rail's prior approval of the plans, specification, method statement and programme of works;
- (b) full access rights, during both the construction and operation phases, are retained for the benefit of Network Rail to enable the carrying out of all necessary maintenance, repair, renewal, inspection and enhancement works;
- (c) recovery of Network Rail's legal and professional fees, costs and disbursements incurred in connection with the proposals to carry out the works and any other costs incurred by Network Rail arising out of the construction, operation and maintenance of the works; and
- (d) that no work will be carried out unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.

6 Level Crossing at Valley

- 6.1 Network Rail is considering the potential impact of any increase in users of the level crossing at Valley arising from the construction and operation of the Proposed Development. Network Rail will update the ExA and confirm whether a new Requirement needs to be inserted into the DCO to deal with any impacts arising at the next appropriate deadline.

7 Conclusions

- 7.1 Network Rail does not object in principle to the Proposed Development. However it strongly objects to the proposed compulsory and permanent acquisition of rights over operational and third party land in which it has an interest and the temporary use of its operational land, which should be dealt with by private agreement.
- 7.2 Network Rail considers that the Secretary of State cannot allow the DCO to be granted without amendment, as the test in section 127 of the Planning Act 2008, cannot be satisfied. The Proposed Development would result in serious detriment to Network Rail's undertaking and Network Rail does not have any other land available to it which could be used to avoid such detriment.
- 7.3 Network Rail requests that the protective provisions provided to the ExA [AS-029] be included in the DCO at Part 3 of Schedule 15 to the DCO at the next appropriate deadline and that an additional Requirement is included in the DCO that requires a construction management plan to be approved by the local highway authority and Network Rail before the commencement of Highway Improvement Works that affect the Freight Facility.
- 7.4 Network Rail is in ongoing discussions with the Applicant regarding the property agreements and other documents to be entered into.
- 7.5 Network Rail is also considering the impact of the Proposed Development on the Valley Level Crossing and will respond to the ExA regarding its findings at the next appropriate deadline.
- 7.6 Until such time as Network Rail is given the protection and assurances requested as detailed in this Written Representation, Network Rail's objection to the DCO will not be withdrawn.

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