

Errata & addenda REP10-069; applicant status; devolution; IROPI; policy; s106; DCO tails; carbon footprint; update; DCO process

EN010007 ExA Deadline 10 Comment, Part 2 of 2

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

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10.5 Errata: Deadline 10 Comment Part 1 REP10-069

10.5.1 The ExA's attention is respectfully drawn to the following proofing errors, with apologies.

para.10.3.1.2: in line 1, please delete "of"

para.10.4.1: the middle paragraph between the two sets of bullet points:
in line 1, please delete "is the only asset"
and replace with "**and properties comprise the principal assets**"

10.6 Addenda: Deadline 10 Comment Part 1 REP10-069

para.10.3.1.1.a: in line 2, between "extension" and the semicolon ";",
please insert the following phrase
"**likely to affect integrity of the Anglesey Terns SPA**"

para.10.3.1.3.a: in the last line, between "years" and "into", please insert "**or longer**"

10.7 Overview observations on some Examination Comment issues

10.7.1 Dismantled Applicant and DCO Examination

10.7.1.1 A novel circumstance has transpired in the course of this Examination into potential Grant of DCO for the proposed Wylfa Newydd Nuclear Generating Station.

- a. That the "Applicant" was dismantled before the close of this Examination is apparent from REP10-037. The Office for Nuclear Regulation informs (17 April 2019) that an Application for a Nuclear Site Licence was withdrawn in consequence of dismantlement of Horizon Nuclear Power Wylfa Limited. The "Applicant" for both the nuclear site licence and the Grant of DCO was/is Horizon Nuclear Power Wylfa Limited (APP-001 referring). Horizon Nuclear Power Wylfa Limited remains defined as the "undertaker" in the proposed DCO in REP10-006, also published 17 April 2019.
- b. It would appear a "dismantled Applicant" (REP7-001 Item 8(b) on page 24; and, REP8-078 section 8.4.1, referring) is able to carry on with the DCO Examination as if dismantlement during Examination was inconsequential for the purposes of the Planning Act 2008.
- c. If dismantlement does not automatically terminate a DCO Examination, and the entity in question declines to withdraw the DCO Application, does it mean the ExA may nevertheless recommend Grant of DCO to a dismantled entity? Or, has the Secretary of State already approved successor entity as a Credible Nuclear Power Operator?

10.7.2 Devolution Matters

10.7.2.1 Planning Act 2008 and devolved jurisdiction

10.7.2.1.1 According to the Welsh Government letter to Local Authority Chief Planning Officers and others (the Thomas Letter¹ dated 2 April 2009),

- a. the introduction of the PA 2008 did not alter the devolution settlement for Wales;

¹ Welsh Government (2009) Application of the Planning Act 2008 to the Planning Function in Wales. Letter from Rosemary Thomas (Chief Planner/Deputy Director, Department for Environment, Sustainability and Housing, Welsh Government) to Local Planning Authority Chief Planning Officers, Local Planning Authority Chief Executives and Wales Planning Forum). Ref PAA 53-06-qA699698, dated 2 April 2009.

- b. the Act applies to Wales only in respect of projects where the principal consenting regime replaced by the Act was also not devolved;
 - c. “it is intended that consents which are currently devolved and which the Secretary of State has no current power to grant under existing statutory regimes (for example listed building consent), will continue to be granted by the relevant bodies, and will not be within the jurisdiction of the [DCO Examining Authority]”; and,
 - d. the land use planning system in Wales is devolved.
- 10.7.2.1.2 Following amendment of the PA2008 by the Wales Act 2017, associated development accompanying an NSIP in Wales *may* now also be consented under amended section 115 of the PA2008. Even so, the Secretary of State’s power to consent associated developments in Wales under the PA2008 remains discretionary. Section 120 of the PA2008 is also discretionary. The proposed DCO for Wylfa Newydd clearly engages interaction between devolved function and the Secretary of State’s discretion. It would have been helpful for IPs for the ExA to requisition independent objective advice and guidance from constitutional law expert(s) on Welsh devolution, for clarity and avoidance of doubt.
- 10.7.2.1.3 In the instance of a project as large as the proposed Wylfa Newydd development, it does not appear appropriate for the Secretary of State to corral under the proposed Grant of DCO discretionary consents for development proposals that are properly determinable competently under devolved jurisdiction, and constitute devolved matters. Namely, consents for spent fuel and radioactive waste storage facilities Work No. 1D; marine Work Nos. 1E, 1F, 1G and 1H, respectively; and, Site Preparation and Clearance Work No. 12. The Applicant is applying for consents for these developments through the Secretary of State. It would only be proper to decline consents for these developments through the proposed DCO (REP10-006). Devolved matters could be remitted for determination to respective devolved domains.
- 10.7.2.1.4 The objectives sought by the Applicant are fully available under devolved jurisdiction and proportional to the determination desired. It is not as if the Secretary of State needs to step in to provide the Applicant consent or remedy not available under devolved jurisdiction. Blanket use of discretion to cut out or override devolved function would be troubling and a cause for concern. It sets a bad precedent. The spectacle of the largest developer in modern Welsh history turning against and evading devolved jurisdiction also sets an undesirable precedent. It does not augur well for respect and recognition of legitimacy of devolved institutions and devolved jurisdiction.
- 10.7.2.1.5 Corraling on such a grand scale cannot be desirable. It undermines and usurps local democratic control and oversight of development proposals. It risks bringing into disrepute central as well as the long established fully functioning devolved domains. It also risks engendering perception of an over lord on devolved function. Corraling could be seen tantamount to back door circumvention, if not neutering, of devolved function. Was this prospect intended under the devolution settlement?
- 10.7.2.1.6 Furthermore, corraling renders the DCO an unwieldy instrument. It risks blurring lines of responsibility for monitoring and enforcement between DCO and devolved powers. These litter the DCO, seeding more confusion than clarity for the public. Devolved consents instruments, on the other hand, maintain straightforward clarity on lines of monitoring and enforcement. Separate consenting preserves as well citizen rights on participation and remedy under devolved jurisdiction at local planning fora.
- 10.7.2.1.7 Regarding the observations that follow below, perhaps the ExA might kindly note it has not proven practicable as lay IP to locate all exchanges on devolved function between the Applicant and other IPs. In turn, that has precluded ability to appraise relevant submissions. This is due to the Examination Library lacking full text/keyword search functionality for locating and tracking particular issues of interest.

10.7.2.2 DCO Work No. 1D Buildings 9-201 and 9-202: Devolved jurisdiction

10.7.2.2.1 In REP9-006, the Applicant accepts that:

- a. interim storage is required “to manage HAW and spent fuel on site in the intervening period” subsequent to post-production cooling and packaging, and the eventual permanent disposal in a geological disposal facility (GDF): the second paragraph under R17.10.1 (g); and,
- b. interim storage facilities could be located off-site, on other nuclear licensed/licensable site. “... in theory there could be an offsite location ...”: the fourth paragraph, under R17.10.1 (g).

To that extent, Buildings 9-201 and 9-202 could not properly also be held as constituting integral part of the proposed nuclear generating station or, by extension, associated development.

10.7.2.2.2 On the basis of footprint area alone, the twin Buildings qualify as major development in their own right, in accordance with Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

10.7.2.2.3 The Explanatory Memorandum REP8-033 doesn't provide detailed explanation and justification for the Applicant's preferred planning status for these Buildings. Further, the Applicant has not been able to advance a robust case in support of DCO consent either under sections 14 (integral part) or 115 (associated development), respectively, of the PA2008: REP10-069 sections 10.3.2 to 10.3.5, inclusive, referring. By implication, Buildings 9-201 and 9-202 arguably constitute a development project in its own right. Paras 10.7.2.2.1 and 10.7.2.2.2 above lend strength to this argument.

10.7.2.2.4 Whatever the detailed facts of the case argued at the Hinkley C DCO Examination regarding interim storage facilities for radioactive waste, the proposed off-site solution for seven Advanced Gas Cooled Reactor nuclear power stations establishes that Hinkley C is by no means the norm.

10.7.2.2.5 According to the Applicant, construction work on the Buildings would commence around 10 years after the new reactors start operating at Wylfa, taking two years for completion (2033-2035): SWQ2.14.3 in REP5-002, referring. It is only proper that development consents that are devolved remain within the devolved determination domain.

10.7.2.2.6 Deletion of Work No. 1D comprising Buildings 9-201 and 9-202 from the proposed DCO for Wylfa Newydd continues to remain arguably warranted. DCO Work No. 1D appears arguably capable of constituting major development in its own right. Development consent for these Buildings arguably falls for determination under devolved jurisdiction, pursuant to relevant provisions of the TCPA 1990. Development consent for waste storage facilities is a devolved matter in Wales: REP5-083 section 5.5.5, referring as well.

10.7.2.3 DCO Marine Work Nos. 1E, 1F, 1G and 1H, respectively: Devolved jurisdiction

10.7.2.3.1 The inclusion of these Works in the proposed DCO clearly transgresses on devolved development consenting regime in Wales under the Marine and Coastal Access Act 2009. While the consenting function is the domain of Natural Resources Wales, enforcement remains the responsibility of Welsh Ministers.

10.7.2.3.2 The inclusion of Marine Works in the DCO is undesirable. It serves no efficacious purpose. Consents under the Secretary of State's discretionary power amounts to unnecessary overlordship. Deletion of respective Marine Works from the proposed DCO for Wylfa Newydd continues to remain arguably reasonably warranted.

10.7.2.4 DCO SPC Work No. 12: gaming jurisdictions

- 10.7.2.4.1 On 5 February 2019, the Applicant withdrew the SPC Planning Application 38C310F/EIA/ECON ahead of appointment by the Welsh Government of a devolved Public Local Planning Inquiry Inspector to report on the Planning Application. The Application was Called-in by Welsh Ministers on 13 December 2018, following determination by Anglesey Council on 5 September 2018 under the TCPA 1990. Although the Applicant is now pursuing SPC consent under the proposed DCO Work No. 12, the Applicant has retained Article 5 in the DCO. Article 5 refers to separate SPC planning permission under the TCPA 1990.
- 10.7.2.4.2 There is more to this than simply a withdrawal of planning application. The Applicant seemingly set about gaming planning jurisdictions in calculated manner, exploiting the DCO consenting process as a loophole to evade determination under devolved Call-in statutory development consent domain. Gaming planning jurisdictions in this manner risks creating an impression of abuse of process. It would be undesirable for the Secretary of State to become party to such gaming through a loophole in the form of discretion under the PA2008. Giving seal of approval to gaming brings both planning regimes into disrepute. Should discretion be deployed to reward gaming or seeming abuse of process? Was this prospect intended under the devolution settlement?
- 10.7.2.4.3 Jumping jurisdictions at Call-in stage sets a very bad precedent. What message does it send to the public? To other developers?
- 10.7.2.4.4 Consenting to SPC Work No. 12 in a Grant of DCO is wholly discretionary under the PA2008. The Secretary of State could resist sanctioning and legitimating the Applicant's manipulation of planning jurisdictions by declining to determine the SPC works under the proposed DCO. Let the Applicant consider Article 5.
- 10.7.2.4.5 Deletion of SPC Work No. 12 from the proposed DCO for Wylfa Newydd continues to remain reasonably warranted.

10.7.3 IROPI and alternative solutions assessment

- 10.7.3.1 It is questionable whether the Applicant has demonstrated satisfactorily an IROPI case for the Wylfa Newydd DCO Project (REP5-045): section 9.5 in my Deadline 9 Comment, referring.
- 10.7.3.2 Further, the Applicant's Assessment on Alternative Solutions (REP5-044) appears half hearted and inadequate: section 9.5 in my Deadline 9 Comment, referring.
- 10.7.3.3 It would be ironic were the Secretary of State to accept at face value the Applicant's questioning of financial feasibility of alternative solutions (REP5-044), in view of questionable financial feasibility of the proposed Wylfa Newydd DCO Project. The Applicant requests accommodation under proposed Articles 9, 83 and 84 in the dDCO (REP9-006 and R17.2.16 in REP9-007, referring), in respect of financial guarantees for a project which the Applicant's owner (Hitachi Limited) has publicly stated is commercially and financially unviable as a business proposition in the private sector. See Hitachi's three main criteria for business continuation, in footnote 5 in REP10-069; as well as Hitachi's Chairman's conclusion on nationalisation pre-condition for resuscitating the Wylfa Newydd DCO Project: para.10.4.3 in REP10-069 referring.
- 10.7.3.4 The Applicant's Tern Compensation Proposal (REP9-028) remains necessarily beset with uncertainty. What is the probability of successful outcome at each proposed compensation site? How climate change resilient are the sites? How might individual sites be affected by future development plans or programmes?

10.7.4 Policy context

10.7.4.1 The Applicant is attempting to steer the DCO Application blind as it were, through prevailing vacuum on approved relevant policy for the post-EN-6 timeframe. The assumptions, evidence base, findings, projections, conclusions and recommendations in the 2011 NPSs were derived and determined specifically to inform Government policy on nuclear new build up to the end of 2025. These cannot simply be extended or copy-pasted into a timeframe beyond 2025. Change in relevant circumstances highlighted by the Secretary of State, in the Nuclear Update statement to Parliament on 17 January 2019, cautions against such supposition. To that extent, the 2011 EN-1 and EN-6 NPSs arguably may not merit much weight, pursuant to Examination of the Applicant's Application for a Grant of DCO under section 105(2)(c) of the PA2008.

10.7.4.2 The Applicant's DCO Application may also be said to fall short of EN-1 para.1.1.3². According to EN-1 para.3.5.10, Wylfa (in Anglesey) was only included in the 2011 EN-6 because the site was:

“shown to be capable of deployment by the end of 2025”,

and because

“2025 also represents a realistic timeframe for the construction of new nuclear power [station]”.

The current Wylfa Newydd DCO Application is incapable of discharging these policy objectives within the timeframe specified.

10.7.4.3 Moreover, the Applicant has not been able to identify the approved evidence base for new non-renewable generating capacity that Wylfa Newydd would displace in the timeframe beyond 2025: applying the principle in para.3.3.2.2 in EN-1. Namely, to what extent is the proposed Wylfa Newydd DCO Nuclear Generating Station intended “in principle” to contribute to the balance of demonstrable need for “new non-renewable capacity”³, in the context of relevant change in circumstances flagged in the Secretary of State's Nuclear Update statement to Parliament on 17 January 2019? This lacuna arguably underscores prevailing insufficiency in relevant information available to the ExA on need for nuclear new build in the timeframe beyond 2025.

10.7.4.4 Furthermore, in holistic context, the putative need for Wylfa Newydd nuclear power station evidently runs contrary to the 1976 Recommendation 27 of the UK Royal Commission on Environmental Pollution (RCEP). Need for Wylfa Newydd is posited in the context of need for significant level of new nuclear capacity by 2035. However, the Applicant has yet to adjust any forecast need for nuclear new build in accordance with the relevant change in circumstances highlighted in the Secretary of State's Nuclear Update statement to Parliament on 17 January 2019⁴.

a. The Applicant's flagship Oxera Report cites specific nuclear industry forecast on need for new nuclear capacity in the region of 20GW-25GW (para.2.38 of Appendix 11-2, in REP8-036 Statement of Reasons). Wylfa Newydd is said to contribute to that need for new nuclear power in the UK. Clearly, any programme of 20-25GW nuclear new build

² Namely, “Applicants should therefore ensure that their applications, and any accompanying supporting documents, are consistent with the instructions and guidance in this NPS, the relevant technology-specific NPS and any other NPSs that are relevant to the application in question.”

³ The fourth bullet point under para.3.3.22, in: DECC (2011) Overarching National Policy Statement for Energy (EN-1). Laid before Parliament for approval – June 2011. With Impact Assessment. URN 11D/711. Department of Energy and Climate Change. July 2011. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf

⁴ 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>

manifestly constitutes “a large programme of nuclear fission power” (to borrow the phrase from RCEP).

- b. The RCEP counselled against “a large programme of nuclear fission power” under Recommendation 27 of their 1976 Report on Nuclear Power⁵, on the following ground:

‘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.’

- c. There is no disputing the fact that the UK not only currently does not possess a Geological Disposal Facility (GDF) for “the safe containment of long-lived highly radioactive waste for the indefinite future”, the UK is not able either to demonstrate its safe operation beyond reasonable doubt. The Wylfa Newydd proposal, in the context of significantly large new nuclear capacity, stands clearly contrary to the RCEP Recommendation 27. The Government’s comfort blanket in the form of current policy on geological disposal scarcely vitiates Recommendation 27.
- d. By implication, the Applicant’s IROPI justification for nuclear new build at Wylfa could be said to run counter to RCEP Recommendation 27. Should the Secretary of State be minded to Grant a DCO for Wylfa Newydd, that too would run counter to the Royal Commission’s Recommendation.

10.7.5 Section 106 Agreement implementation

10.7.5.1 Notwithstanding that a section 106 Agreement has to be between the Applicant and the Local Planning Authority, it would be appropriate and desirable for the Secretary of State to ensure that,

- a. local community councils and settlements directly or most affected by the proposed DCO developments are vested with full control over identifying, defining, determining and decision making on appropriate/suitable compensation measures that meet assessed concerns;
- b. affected local community councils and settlements are able to claim full cost recovery against section 106 funds for approved compensation measures; and,
- c. that the Local Authority is charged with:
- (i) providing friendly guidance, as well as administrative; auditing; banking; contracting and tendering; enforcement; monitoring; and, supervisory support services for the local community councils and settlements concerned;
 - (ii) arranging, managing and running those support services;
 - (iii) ensuring delivery of section 106 agreements; and,
 - (iv) duly monitoring and enforcing the Applicant’s obligations under section 106 Agreement.

10.7.5.2 It would not be appropriate to entrust decision making on compensation measures exclusively to the Local Authority. The Authority is better suited to the role of providing guidance, oversight and support.

10.7.5.3 All decision making involving operation and implementation of section 106 needs to be seen to be exercised fully transparently and democratically at grass roots level. That means, all

⁵ RCEP (1976) Nuclear Power and the Environment. Royal Commission on Environmental Pollution, Chairman Sir Brian Flowers. Sixth Report. Cmnd 6618. HMSO.

determinations, ratification, deployment and disbursal decisions need to rest directly and solely with affected local community councils and settlements in question.

10.7.5.4 It is not readily apparent whether local community councils and settlements directly or most affected by the proposed DCO developments were consulted expressly on a final version of the section 106 Agreement. The Agreement arguably constitutes sufficient elements of environmental decision making by the Local Authority to merit such consultation.

10.7.5.5 Moving on to a separate issue arising in REP7-014 (IACC submission on Third Issue Specific Hearing on the draft DCO and the draft s106 Agreement Wednesday 6th March 2019).

a. According to the IACC in para.10.2, as a result of discussions with the Applicant, the Council now:

“considers that seeking restoration security in the form of a funding security for the entire site would stop the project and make it commercially inviable.”

b. It is not apparent whether the Local Planning Authority consulted local community councils and settlements directly or most affected by the proposed SPC Works, before altering its stated position on early site restoration bond (a position held at least since 5 September 2018).

10.7.6 DCO Tailpieces

10.7.6.1 The Secretary of State is respectfully requested to ensure that only those tailpieces that are of the utmost essential need, and fully assessed in the Environmental Statement, are permitted under the proposed DCO. Approval of use of tailpieces by the courts should not be a reason for not appraising proposed tailpieces case by case.

10.7.6.2 In this regard, observations in REP2-305 section 2.2 continue to be relevant. After all, according to the Applicant in REP5-045 para.7.3.3, the Wylfa Newydd DCO Project,

“is a Nth of a kind (NOAK) (i.e. not first of a kind).”

To that extent, the Applicant could rightly expect to be held to the highest standard.

10.7.7 Carbon footprint: not assessed for SPC Works (or, for early site restoration)

10.7.7.1 Information on the carbon footprint of site preparation and clearance activity (DCO Work No. 12) continues to remain unassessed despite constituting discrete environmental effect. There is no proper accounting of carbon emissions associated with this key primary phase of development of the proposed Wylfa Newydd Project. Section 7.5.2.1 in REP7-036 refers as well.

10.7.7.2 It is obvious SPC activity on the WNDAs will result in complete loss of established soil carbon, as well as the soil's carbon fixing capability/capacity through microbial action and soil environmental conditions/factors. This amounts to an irreplaceable loss, constituting a distinct carbon footprint. All SPC work clearly merits separate carbon footprint assessment. Hiding the loss under overall carbon emissions attributable to the construction phase of the proposed nuclear power station is misleading and unacceptable. Notably, the scale of SPC works proposed on the WNDAs comprise a major development project in its own right, under Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. Should early site restoration be necessary (because of abandonment or cancellation of the nuclear new build project), that too would generate its own distinct carbon footprint.

10.7.7.3 Under the circumstance, it stands to reason for the Secretary of State to require comprehensive carbon footprint assessment of SPC Works, prior to authorisation of any SPC activity on the WNDA.

10.7.8 Nuclear Accident consequences in the United Kingdom: missing assessment under the DCO Examination

10.7.8.1 It is ironic that unlike the transboundary consultation with governments and their respective publics in 27 European Union member states, as well as in 3 European Economic Area member states (the relevant Parties to the 1991 Espoo EIA Convention), on consequences of a major nuclear accident at the proposed Wylfa Newydd Nuclear Power Station, the Secretary of State has not directly consulted likewise the domestic public and local authorities in the UK during the same DCO Examination.

10.7.8.2 Such apparent inconsistent treatment of territorial and extra territorial publics seems perverse, unnecessarily discriminatory and illogical. Paras 2.3.4 and 2.3.7, respectively, in REP1-038 refer as well.

10.7.8.3 The Secretary of State is respectfully requested to rectify this lack of parity under the DCO process through fresh domestic public consultation and examination.

10.7.9 REP2-101: Contingency plans for no replacement reactor at the Wylfa site

10.7.9.1 In light of apparent financial uncertainty clouding the prospects for construction of Hitachi's proposed twin UKABWRs at Wylfa, the Secretary of State is respectfully requested to attach to any Grant of DCO, or write into the DCO, the Anglesey Council's contingency plan for responding promptly in the event the proposed Wylfa Newydd DCO Project is abandoned or cancelled by the developer. Policy Recommendation 3 in REP2-101 refers.

10.8 An Update: Partial revision of comment in para.9.1.3.2.a, under section 9.1.3 in Deadline 9 Comment

10.8.1 Subsequent to the submission under Deadline 9, in the course of preparing this Comment, I chanced upon the advice on devolved matters requested by the ExA in Action Point 15 (OD-004: ISH 24 October 2018). Namely,

- REP2-043 Statement of Common Ground between Horizon Nuclear Power Wylfa Limited and the Welsh Government: section 1.3 refers; and,
- REP4-053 Post ISH jan2019 submissions including written submissions of oral cases. Appendix C Welsh Government comments on draft Development Consent Order. Devolution and WG Appellate Function: paras 20-23, inclusive, refer.

Having had sight, I have no further observation, other than that the issue reasonably merited requisition of independent objective advice and guidance from constitutional law expert(s) on Welsh devolution, for clarity and avoidance of doubt.

10.8.2 Nevertheless, it still leaves unresolved an onerously burdensome fishing expedition to locate responses from other IPs on this particular issue. This is due to the Examination Library lacking full text/keyword search functionality.

10.9 Equality of arms and the DCO process: some feedback for ExA and PINS

- 10.9.1 This experience of engaging in the DCO process reveals unfairness for lay IPs. For citizen IPs lacking benefit of an organisational base, the process is impracticable at a number of levels. Meaningful engagement would demand almost full time all consuming attention.
- 10.9.2 Practical consequences for lay IPs include the following.
- a. Lack of full text/keyword search function in the Examination Library means ignorance of what has already been stated on a particular point, as well as ignorance on the range of perspectives on a particular point. This effectively precludes appropriate submission relating to that point.
 - b. It is just not possible to read up all Examination submissions within allotted timescales between submission Deadlines, in order to consider drafting response on a particular point by tracking it through submissions (re, (a), above).
 - c. The window of opportunity between the Acceptance of the Application for Examination (28 June 2018) and commencement of the DCO Examination (24 October 2018) was simply too narrow to allow appraisal of an Application consisting of 440 documents (running to 41,000 pages) and over 400 drawings. This was followed by even narrower windows between 10 serial Examination Deadlines for appraisal of a tranche of new documents from the Applicant and other IPs at each Deadline. For example, by the 9th Deadline, the Examination Library had accumulated in the region of 1,213 additional documents, not counting those generated by the ExA.
 - d. The act of locating, then reading and analysing a point to reasonable extent, eats into available drafting time, resulting in sacrifice of effective copy editing for coherent submission in the rush to meet tight Deadlines. Consequently, subsequent action is reduced to the odd errata.
 - e. Unavailability of transcripts of all oral hearings entails setting aside even more, and lengthier, time to listen to an audio recording (and to re-listen in order to grasp complex or nuanced detail). This is simply not practicable. Consequently, the information in the recordings remains effectively hidden.
- 10.9.3 Such factors, multiplied across IPs, could only favour an Applicant. The result has to be a reduced amount of analysis all around, to the ExA's disbenefit. Yet this is supposed to be an Examination in public of all submissions by the Applicant. Even institutional IPs would be pushed to read and analyse all Examination documents, at the pain of committing a very high level of resources.
- 10.9.4 My individual submission Comments have thus necessarily reflected a severely truncated and patchy appraisal of the evidence in Examination.
- 10.9.5 The Infrastructure PINS needs to give serious thought to:
- a. improving DCO Examination engagement for citizen IPs; and,
 - b. upgrading the Examination Library to full text/keyword search functionality.

J Chanay
22.04.2019