WRITTEN SUMMARY OF WREXHAM POWER LIMITED'S (THE "APPLICANT") ORAL CASE PUT AT THE ISSUE SPECIFIC HEARING ON PROJECT DEFINITION AND THE DEVELOPMENT CONSENT ORDER OF 19 JULY 2016

1. INTRODUCTORY REMARKS

1.1 The Issue Specific Hearing ("**ISH**") on project definition and the draft Development Consent Order ("**DCO**") was held on 19 July 2016 at Redwither Tower, First Avenue, Redwither Business Park, Wrexham Industrial Estate, Wrexham LL13 9XT.

1.2 The ISH took the form of running through each question set out in the Schedule of ExA issues and questions relating to the draft DCO (Revision 0, Examination Reference APP-033). The Schedule is contained in Annex H to the Examining Authority's ("**ExA**") Rules 6 and 13 letter dated 24 June 2016.

1.3 This document summarises the Applicant's case as presented at the ISH.

2. INTRODUCTION OF THE PARTICIPATING PARTIES

2.1 Speaking on behalf of the Applicant:- Richard Griffiths (Partner at Pinsent Masons LLP).

2.2 Present from the Applicant:- Daniel Chapman (Director), Rupert Wood (Director) and Simon Keefe (Investment Manager).

2.3 The Applicant's planning consultants were also present:- Karl Cradick (Director at Savills).

2.4 The following parties participated in the ISH:

2.4.1 Wrexham County Borough Council: Kevin Hughes (Senior Planning Officer)

2.4.2 Welsh Water: Henry Jones-Hughes

2.4.3 North Wales Wildlife Trust: Jonathan Holson

2.4.4 Local residents: Christopher James Briggs, Susan Harber, and Clive Roberts.

3. SPECIFIC ISSUES AND QUESTIONS BEARING ON THE DCO, RAISED BY THE EXA

3.1 The ExA turned to Annex H and questioned the Applicant in the order of the questions as presented in Annex H.

3.2 Mr Griffiths, on behalf of the Applicant, answered each of those questions and his oral response is documented in the Table attached to this Summary at **Appendix One** (where Annex H is replicated, but with an additional row that details his response).

3.3 In addition to the summary contained in Appendix One:

3.3.1 **Question 7:** Mr Griffiths confirmed that Legal Submissions would be submitted as requested by the Question (see **Appendix Two**). In response to a question asked by Mr Briggs, Mr Griffiths explained that Scottish Power Energy Networks ("**SPEN**") has the responsibility to obtain consent (if necessary) for the electrical connection (which has been confirmed by SPEN

as an underground connection between the Wrexham Energy Centre and the substation known as the "Legacy Substation").

3.3.2 **Question 8**: Mr Griffiths confirmed that Legal Submissions would be submitted as requested by the Question (see **Appendix Two**).

3.3.3 **Question 11**: Mr Hughes confirmed that the new Article proposed by the Applicant giving notice of the date final commissioning was acceptable subject to the wording providing adequate notice.

3.3.4 **Question 42**: Mr Briggs asked why the hedgerow opposite the recycling centre was missing. Mr Chapman (from the Applicant) stated that this land was not in the ownership of the Applicant and that the Applicant had not carried out any work to remove or reduce in size any hedgerow. Mr Hughes (representing the Council) informed the Examination that this land may be connected to a planning permission approving a biomass plant. Mr Hughes was asked by the ExA to provide confirmation. Mr Griffiths (on behalf of the Applicant) requested that Mr Briggs mark on the land plans the location of the hedgerow in question, which can then be compared with the land under consideration in this Examination.

3.3.5 **Question 44**: The ExA noted that an updated Book of Reference (Examination Library Reference OD-003) had been submitted pre-Examination and confirmed that he would be asking the Applicant for an explanation as to the nature of the changes and the extent of the Applicant's enquiries. Mr Griffiths (on behalf of the Applicant) highlighted that the Article the subject of Question 44 is a different point to carrying out diligent inquiry in respect of complying with section 44 of the Planning Act 2008. Regarding the changes to the Book of Reference, Mr Griffiths reassured the ExA that the changes to the Book of Reference largely relate to change of service address, change of company name and deletions of interests. A couple of new land interests have been identified, which is not unusual during an Examination process.

3.3.6 **Question 53**: In response to a question from Mr Roberts ensuring that the dual carriageway is utilised for construction traffic, Mr Griffiths (on behalf of the Applicant) referred Mr Roberts to the draft construction traffic management plan (Examination Library Reference APP-144), which contains the proposed construction traffic route (which utilises the dual carriageway). The final construction traffic management plan, which must be submitted before any work may commence (Requirement 9, Schedule 1 of the draft DCO), must be substantially in accordance with the draft construction traffic management plan, with the relevant planning authority being the approving body.

4. OVERVIEW OF AGENDA

4.1 Once the ExA had examined the issues and questions contained in his Annex H, the ExA returned to Items 2, 3, 4, 5, 7 and 8 of the Agenda to confirm that all points had been covered.

4.2 The following additional points were discussed:

4.3 Protective provisions

Mr Griffiths, on behalf of the Applicant, provided the following update on protective provisions:

4.3.1 **National Grid Gas**

(a) Progress – The Applicant is in discussions with National Grid Gas over the form of the protective provisions (Part 1 of Schedule 8 to the draft DCO) and need for a side agreement. These discussions are on-going, but the Applicant is hopeful that they will be complete before the end of the Examination and agreed Protective Provisions included in the draft Order.

4.3.2 **BT**

(a) Progress – The protective provisions included in the draft Order (Part 2 of Schedule 8) have been updated to reflect the procedure BT has requested on other projects where the Applicant has had to engage with them. The draft provisions have been issued to BT, and to date the Applicant is awaiting a response. The Applicant will continue to chase.

4.3.3 **Welsh Water**

(a) Progress – Welsh Water provided comments on the draft provisions, which have been incorporated into Part 3 of Schedule 8 to the draft DCO. The Applicant is waiting for final approval to these provisions.

4.3.4 **FibreSpeed**

(a) Progress – The draft provisions, Part 4 of Schedule 8 to the draft DCO, have been issued to FibreSpeed, but to date no comment. The Applicant will continue to chase.

4.3.5 **Dee Valley Water Plc**

(a) Progress - The draft provisions, Part 5 of Schedule 8 to the draft DCO, have been issued to Dee Valley Water Plc but to date no comment. The Applicant will continue to chase.

4.3.6 **SP Energy Networks (SPEN)**

(a) Progress – The draft protective provisions, Part 5 of Schedule 8 to the draft DCO, have been issued to SPEN and they are currently reviewing them. The Applicant will continue to liaise with SPEN so that agreed provisions can be included.

4.3.7 **Wales and West Utilities**

(a) Progress – The Applicant is in discussions with Wales and West over the form of protective provisions they may require, and is hopeful that a positive conclusion will be reached before the end of the Examination.

4.4 **Commercial agreements, planning obligations or side provisions**

4.4.1 Mr Griffiths, on behalf of the Applicant, confirmed to the ExA that:

(a) no planning obligation had been requested by the relevant planning authority (although it is noted that during the ISH Mr Hughes on behalf of the Council referred to the possibility that ecology management may need to be secured via planning obligation (or Requirement)); and

(b) currently only one side agreement had been requested – National Grid Gas (see paragraph 4.3.1 above).

4.4.2 During the ISH, Mr Jones-Hughes on behalf of Welsh Water, referred to the need for a discussion between the Applicant and Welsh Water over the adoption of certain works which Welsh Water has an interest in. It was confirmed that the Applicant was in discussions with Welsh Water and would update the Examination accordingly.

4.5 Crown consent

4.5.1 Mr Griffiths, on behalf of the Applicant, confirmed that the Crown disputed ownership of the interests identified in the Book of Reference (in that the Crown considers the registration to the Crown by the Land Registry a mistake). Whilst this "mistake" is being rectified (which only the Crown can pursue and not the Applicant), the Applicant has asked the Crown for consent under section 135 of the Planning Act 2008 in any event.

APPENDIX ONE

ANNEX H WITH THE APPLICANT'S ORAL RESPONSE TO EACH QUESTION

In its Rules 6 and 13 letter dated 24 June 2016, the Examining Authority (ExA) set out at Annex H a list of questions that it intended to explore at the Issue-Specific Hearing (ISH) on Project Definition and the draft Development Consent Order (DCO) that was held on 19 July 2016. Annex H is reproduced below, but with an additional row that details the Applicant's response which was orally submitted at the ISH on 19 July 2016. Accompanying this document is a revised draft DCO (Revision 1, Document Reference 3.1) which contains the changes set out below. A comparison version of the draft DCO also accompanies this document, which shows the changes made between Revision 0 and Revision 1.

This document should be read as an explanation to the changes made to the draft Development Consent Order.

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
1.	General: Order Format and Tracking of Changes		The applicant is asked to confirm that subsequent versions of the DCO submitted after the application version will be: (a) supplied in both .pdf and Word formats, the latter showing changes from the previous version in tracked changes, with Word comments outlining the reason for the change; and (b) supported by a report validating that version of the DCO obtained from the publishing section of the legislation.gov.uk website?
		Applicant comment: We will provide the ExA with a comparison version of any future iterations of the draft DCO (the new version compared against the previous version) together with a cover note explaining the changes. Track changes and word comments are not compatible with the SI Template. We will provide the validation report when we submit the final draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
2.	**General: List of Plans/ Documents to be Certified**		The applicant is asked to prepare and maintain a tabulated list of all plans and other documents that will require to be certified by the SoS under **Art 37** (including all plan, drawing and revision or document reference numbers), to be updated throughout the examination process, and supplied to the Examining authority at each relevant deadline and before the close of the examination.
		Applicant comment: Confirmed.	
3.	**General: Drawing and Revision Numbers**		The applicant is asked to ensure that all plans referred to in **Art 2** and elsewhere are identified by Drawing and Revision Numbers in subsequent versions of the draft DCO. Where revisions are prepared, these should be reflected in the latest version of the DCO.
		Applicant comment: Confirmed.	
4.	**General: Document Numbers**		The applicant is asked to ensure that all documents referred to in **Art 2** and elsewhere are identified by their correct document numbers in subsequent versions of the draft DCO. Where revisions are prepared and document numbers change, these should be reflected in the latest version of the DCO.
		Applicant comment: Confirmed.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
5.	**General: drafting approach to compensation for CA and TP**		A number of articles make provision for *"compensation to be determined, in case of dispute, under Part 1 of the 1961 Act"*. It is commonplace in DCOs and other Orders. However, Part 1 of the1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations(e.g. the temporary use of land under **Art 27**, or the felling of trees under **Art 33**), the applicant is asked if a modification should be included as with the other compensation provisions in **Schedule 6**? If not, why not?
		Applicant comment: The reference to compensation being determined under Part 1 of the 1961 Act is specifically included to give the Upper Tribunal (Lands Chamber) jurisdiction to determine the dispute that has arisen under the Order. The Order makes it clear the circumstances that compensation must be paid – Articles 26, 27 and 32 (formally Articles 27, 28 and 33), for example, expressly provide that compensation is payable for any loss or damage arising from activities authorised by the Articles. The Articles then refer to Part 1 of the 1961 Act to give the Upper Tribunal (Lands Chamber) jurisdiction to determine any dispute that may arise to a person's entitlement to compensation or as to the amount of that compensation due as prescribed under the Article. **No amendment is required to the wording of Schedule 6 of the draft DCO in relation to Part 1 of the 1961 Act for this to take effect.**	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
6.	**General: 'guillotine' provisions**		**Art 15** provides a 7 day period for the traffic authority to respond to a notice of intention. **Art 39** purports to confer deemed consent in defined circumstances, if a consultee or respondent does not respond within 8 weeks (a 'one-way guillotine' provision). **Schedule 9 paragraph 1** purports to provide an approach which confers either deemed consent or deemed refusal in defined circumstances, depending on whether the application relates to subject matters that give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (a 'two-way guillotine' provision). The applicant is asked to: a) explain why guillotine provisions are believed to be necessary and set out the objectives that it seeks to deliver through these provisions; b) provide a comparative analysis of these provisions with provisions in similar made Orders; c) explain the conditions in which the guillotine provisions would operate with regard to the following issues: • are there any circumstances in which a matter subject to a one-way guillotine could give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved? If there are, should **Art 39** contain a two-way guillotine provision?

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
			• In relation to the two-way guillotine provision, **Schedule 9 paragraph 1** appears to provide that only the applicant can judge whether an application is one to which a deemed refusal would apply. Is there an argument that this judgement is one that should be made by the deciding body, not the applicant? • How would the operation of the guillotine provisions interact with the arbitration provision under **Art 40**, or the appeals provisions of **Schedule 9 paragraph 3**? • Provide evidence that the guillotine has been discussed with each relevant consultee or respondent, that they are aware of it and have had the opportunity to comment on their ability to comply with it. • Consider if Art 39 and or Schedule 9 should provide that all applications for consent made under them must be accompanied by a statement, drawing the respondent's or consultee's attention to the existence and effects of the guillotine provision? • Consider whether the operation of the Art 39 and or Schedule 9 guillotine provisions are sufficiently clear and simple when taken together and also justified, relative to the objective sought. Could they be simplified? Could other provisions deliver equivalent outcomes?

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
			Applicant comment: **(a) The relevant guillotine provisions are contained in the draft DCO in order to ensure that the implementation of the development authorised by the DCO is not prejudiced or delayed as a result of undue delay on the part of a consenting authority. It would not be acceptable for a nationally significant infrastructure project to be delayed by a consenting authority not responding to a request. The Applicant is in the process of agreeing these provisions with the local authority, which will be the main consenting authority in this case, with a view to recording the agreement in a Statement of Common Ground.** **(b) The provisions contained in Article 14 (formally Article 15) have precedence in the National Grid (Hinkley Point C Connection Project) Development Consent Order, which also refers to its use in other made Orders.** **The provisions contained in Article 38 (formally Article 39), and paragraph 1 of Schedule 9, have precedence in both the Hirwaun Generating Station Order 2015 (Article 38 and Schedule 8) and Progress Power (Gas Fired Power Station) Order 2015 (Article 39 and Schedule 10). In addition, The Meaford Gas Fired Generating Station Order 2016, which was made on 19 July 2016, contains the same provisions in Article 35 and Schedule 8).** **(c)** • **Only the authorised development can be constructed, which must be in accordance with the Works Plans, Access Rights of Way Plan and the parameters identified in Table 2 in Schedule 2 (Requirement 2). The Works Plans and Access Rights of Way Plan cannot be amended, whilst the parameters can only be amended (through the relevant planning authority and Schedule 9) if they are unlikely to give rise to any materially new or materially different environmental effects. Therefore, the Applicant does not consider that there are any circumstances in which reliance on the one-way guillotine provisions would give rise to a materially new or materially different environmental impact as compared to that approved.** • **In respect of the two-way guillotine provision, neither the Applicant nor the consenting body makes a judgment, hence the deemed refusal. It would be a matter of fact if there were a deemed refusal based on whether the circumstances in paragraph 1(3) of Schedule 9 applied.**

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question

			• **The guillotine provisions identified would not apply to arbitration that is instituted pursuant to Article 39 (formally Article 40) (Article 39 makes it clear that arbitration applies "unless otherwise provided for.") Of course, should a consenting body disagree with the applicant's view that the guillotine has been invoked, then that would be a "dispute" and the consenting body could take the dispute to arbitration. The appeal process would also apply to the guillotine provisions - paragraph 3(1) of Schedule 9 makes it clear that a deemed refusal can be appealed.**
			
			• **The Applicant is currently agreeing a Statement of Common Ground with the relevant planning authority, which is also the highway authority and street authority. The Statement of Common Ground covers the draft DCO. A Statement of Common Ground is also being progressed with National Resources Wales and will cover the draft DCO (relevant for Discharge of Water into any watercourse, or any public sewer or drain). Regarding the Protective Provisions, the draft Order is sent to each undertaker for their review when negotiating the Protective Provisions.**
			
			• **The Applicant would not object to including a statement in its application for consent to refer, where applicable, the guillotine provisions. The following amendments are included in Revision 1 of the draft DCO:**
			  • **The following new sub-paragraph has been added to Article 38 (formally Article 39) - (5) "*Where any application is made as described in sub-paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by sub-paragraph (3).*"**
			  • **The following new sub-paragraph (4) has been added to Schedule 9, paragraph 1 - (4) "*Where any application is made as described in sub-paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by sub-paragraphs (1), (2) and (3).*"**
			
			• **It is considered that the provisions are clear and simple – as referred to above, they have been included in other made DCOs. Justification for the guillotine provisions is expressed above, which has been accepted by the Secretary of State on nationally significant infrastructure projects that are similar to the Wrexham Energy Centre.**

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
7.	**General: drafting approach to integral, associated and ancillary development**		The applicant acknowledges in the draft DCO and EM the position arising from PA2008 s115 that a DCO for development in Wales may not provide for 'associated development'. An application and hence a DCO in Wales can include provision for the principal development and matters that are genuinely integral to it, and for 'ancillary matters' (PA2008 s120(3)). Paragraph 3.3 of the EM sets out the applicant's understanding of what is in its view 'an integral part of the NSIP', either as the principal development or as ancillary to it. It refers to paragraphs 4.9-13 of the ExA's report on the Clocaenog Forest Wind Farm Order 2014 ('Clocaenog') as the basis for its approach. There is still some uncertainty about the boundaries between the principal development and associated development, and between the principal development or associated development and ancillary matters. A number of applications have been decided in Wales in addition to Clocaenog: • Port Talbot Internal Power Generation Enhancement • Swansea Tidal Lagoon

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
			• South Hook Combined Heat and Power Station • Mynydd y Gwynt Wind Farm • Hirwaun Power Station • Brechfa Forest West Wind Farm With reference to these decisions and to particular relevant facts in this application, the applicant and other interested parties are requested to consider and address whether the boundaries provided for in this draft DCO are robust. Careful consideration should be given to the identification of all works in **Schedule 1**. Legal submissions from the applicant are requested on this point.
		Applicant comment: See separate legal submission that accompanies this document.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
8.	**General: drafting approach to CA related to associated development**		An issue related to (7) above is that the draft DCO contains CA powers for a gas connection that is acknowledged by the applicant to be associated development. The physical works for the gas connection have been excluded from the draft DCO and are the subject of a separate application to Wrexham County Borough Council under the Town and Country Planning Act 1990 (as amended). The applicant and other interested parties are requested to consider and address whether the DCO can appropriately and lawfully provide for this element of CA, again with reference to other applications decided in Wales. Legal submissions from the applicant are requested on this point.
		Applicant comment: See separate legal submission that accompanies this document.	
9.	**Preamble**		The applicant is asked to draft the Preamble to the next version of the DCO to reflect that the examination will be carried out by a single appointed person.
		Applicant comment: Confirmed, please see Revision 1 of the draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
10.	**Art 2(1)**	*"authorised development" means the development described in Schedule 1 (authorised development) to this Order <u>which is development within the meaning of section 32 of the 2008 Act</u>*	Are the underlined words necessary? Does **Schedule 1** include activities which are not development within s32? Should this definition read *".....development (within the meaning of section 32 of the 2008 Act) described in Schedule 1 (authorised development) to this Order"*? Given the position in Wales, should the term make clear that it does not extend to include associated development, or should this be dealt with in another way (for example, see (20) below) ?
		Applicant comment: The Secretary of State only has the vires to authorise a development consent order for "development" under section 32 and section 115 of the Planning Act 2008. Therefore, there is no legal need for the words underlined and the definition could end after the words "to this Order" if the ExA considers it appropriate. However, the words do provide a link to where you can identify the meaning of development within the Planning Act 2008 and may be helpful in that regard. The positioning of the words underlined follows other Welsh made Orders, being the Hirwaun Generating Station Order 2015, the South Hook Combined Heat and Power Order 2014 and the Brechfa Forest West Wind Farm Order 2013. At this point, no amendment has been.	
11.	**Art 2(1)**	*"date of final commissioning" means the date on which the authorised development commences operation <u>by generating power on a commercial basis</u>*	A number of articles refer to periods by reference to this date (e.g. the maintenance period under **Art 28)**. How are the local planning authority and others to ascertain when this takes place?
		Applicant comment: New Requirement 19 has been inserted into Schedule 2 of the draft DCO (Revision 1) requiring the undertaker to notify the relevant planning authority of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date. The wording follows Requirement 19 of the Hirwaun Generating Station Order 2015.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
12.	**Art 2(1)**	*"illustrative foul and surface water drainage plan" means the illustrative foul and surface water drainage plan with document reference number 2.6 and submitted as revision 0 with the application and regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*	Document 2.6 is actually entitled "Proposed Foul and Surface Water Drainage Strategy". Please confirm the document and title that are intended to be referred to.
		Applicant comment: The Applicant has amended the definition to the following: "*means the plan contained in the proposed foul and surface water drainage strategy (document reference number 2.6, revision 0) and submitted with the application under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*". Please see Revision 1 of the draft DCO.	
13.	**Art 2(1)**	*"illustrative landscape and ecological mitigation master plan" means the illustrative landscape and ecological mitigation master plan with document reference number 2.9.1 and submitted as revision 0 with the application and regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*	This should be a reference to Document 2.9.7?
		Applicant comment: The Applicant has amended the definition to refer to 2.9.7, Sheet 1 of 7. Please see Revision 1 of the draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
14.	**Art 2(1)**	*"limits of deviation" means, in respect of numbered works 1, 3, 4 and 5 inclusive the outer limits of the corresponding numbered area shown on the works plan*	Should this read *"...in respect of numbered works 1A-1G, 3, 4 and 5 inclusive..."*? Notwithstanding Art 2(4), works 1A-1G are individually numbered on the works plan. Separately, the approach taken to the drafting of this definition must read across to the drafting approach taken in **Art 3** at (20) below.
		Applicant comment: Article 2(4) states that "*reference to "Work No. 1" or "numbered work 1" means works 1A to 1G inclusive...*" Therefore, there is no need for the amendment. If the ExA would prefer the definition to expressly refer to 1A-1G, then the amendment can be made, but the Applicant considers that the amendment is not necessary.	
15.	**Art 2(1)**	*"Order land" means the land required for, or required to facilitate or is incidental to, or affected by, the authorised development shown on the land plans and described in the book of reference*	This is a complex definition. Presumably it is intended to correspond with the description of what can be compulsorily acquired under **Art 18**? Is there is an inconsistency with the land plans which refer to the land coloured pink (to be acquired), yellow (subject to temporary use) and blue (subject to new rights) as 'Order land'? The key merely identifies the red edging on the land plans as "Land required for, or affected by, the authorised development". What land is 'required to facilitate' or 'incidental to' the authorised development? There is an argument that it would be simpler and clearer to identify a single perimeter (sometimes referred to in planning applications and Orders as the 'red line' application boundary) to express the Order land. If this is not appropriate, the applicant is invited to consider whether there is any clearer or simpler way of identifying the Order land as distinct from the 'red line'.

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: The reference to "*or required to facilitate or is incidental to"* relates to the test set out in the Secretary of State's decision for The Hirwaun Generating Station Order 2015. At paragraph 3.26 of the decision letter for the Hirwaun Generating Station, the Secretary of State confirmed that compulsory acquisition powers for associated development could be included if the land is required to "facilitate" or is "incidental to" the NSIP (being the test in section 122(2) of the Planning Act 2008). The Secretary of State confirmed compulsory acquisition powers for the gas connection and electrical connection that were required for the Hirwaun Generating Station (but development consent was not authorised for the connections). **The Hirwaun Generating Station (Correction) Order 2015 amends the definition of "Order land" to mean "*the land required for, or required to facilitate or is incidental to, or affected by, the authorised development shown on the land plans and described in the book of reference*." This is the same wording as being proposed for the Wrexham Energy Centre.** **The land that is "*required to facilitate or is incidental to*" is the land over which compulsory acquisition powers are being sought but not development consent. This land is where the gas connection would be located, being associated development to the authorised development. We therefore consider it appropriate to leave the definition as drafted.** **Regarding the Land Plans, we propose to amend the key so that the red line is described as "*the land required for, or required to facilitate or is incidental to, or affected by, the authorised development."* This is the single red line marking the extent of the Order land. The colours within the redline are for clarity to show where freehold land is being acquired and where rights are being acquired. The revised Land Plans (Revision 1) accompany this document and will the necessary amendments have been made to the definition of "Land plans" in Article 2(1) of Revision 1 of the draft DCO.**	
16.	**Art 2(1)**	*"undertaker" means Wrexham Power Limited, <u>which is the named undertaker</u>, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order*	What is the relevance of the underlined phrase, which is not used elsewhere in the draft DCO? Taking account of issues in respect of transfer of benefit (see **Art 6** (21) and **Art 7** below), it still seems that the underlined phrase is superfluous and could be removed.

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: The Applicant has amended the definition to remove the underlined words. In addition, the Applicant considers that the words "*or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order*" are also not required given that Article 7(2) states that *"Where a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker include references to the transferee or lessee."* These words have also been deleted from the definition. Please see Revision 1 of the draft DCO.	
17.	**Art 2(1)**		For the purposes of the limit on generating capacity in **Schedule 1**, should there be a definition such as in the Hirwaun and Progress DCOs: *"gross rated electrical output" means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(*a);*?*
		Applicant comment: The Applicant has changed "combined" in Schedule 1 of the draft DCO to "gross" and has added a definition of "gross rated electrical output" into Article 2(1), which means "*the aggregate of the gross electric power as measured in megawatts at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a)*". Please see Revision 1 of the draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
18.	**Art 2(2)**	*(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order to the creation or acquisition of new rights include the imposition of restrictions which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are created and acquired under this Order.*	There seems to be some duplication in the underlined words in the definition. Can this be made more precise and concise in the next draft?
		Applicant comment: The Applicant has made the following amendments in Revision 1 of the draft DCO: ***2(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order ~~to the creation or acquisition of new rights include the imposition of restrictions which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order and references in this Order~~ to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are created and acquired under this Order.*** **The Applicant has also amended Article 18(1) (formally 19(1)) as follows: "*…and create and acquire compulsorily the new rights ~~or~~ and impose ~~a~~ the restrictions described in the book of reference and shown on the land plans."*****	
19.	**Art 2(3)**	*(3) All distances, directions and lengths referred to in this Order are approximate and distances .....shown on the works plan and access rights of way plan are to be taken to be measured along that work.*	Should this be a reference to the *"...access and rights of way plan"*?

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: The plans contained in Document Reference 2.4 (Examination Library Reference APP-009) are labelled as the "access rights of way plan." Unfortunately, the front cover has inserted an "and" between "access" and "rights". We suggest that the term "access rights of way plan" is retained as this is the term used on the actual plans, which the Secretary of State will be certifying. **Revision 1 of the access rights of way plan accompanies this document. The only change is in respect of the front cover, which removes "and" as referred to above. The consequential amendment has been made to the definition of "access rights of way plan" so that it refers to "revision 1"**	
20.	**Art 3**	*(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered line or within the numbered area shown on the works plan.* *(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plan or within the corresponding numbered area shown on the works plan up to the limits of deviation.*	None of the works on the works plan are shown by numbered lines – all are numbered areas? Construction on a precisely defined line can be hard to achieve, once allowances are made for micrositing to address matters such as ground conditions or archaeology. A widely used approach is to specify limits of deviation shown on a plan, or alternatively to say that the Order limits are the limits of deviation. Would it be clearer to remove references to numbered lines? Further, whatever approach is adopted needs to conform to the **Art 2(1)** definition of the "*limits of deviation*", or alternatively that definition may require change (see (14) above). Further to the discussion of associated development at (10) above, is there an alternative argument that provision to the effect that "*Nothing in this article authorises any development that is 'associated development' within the meaning of s115(2) of the 2008 Act"* should be included in this article?

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: **1) Agree: the Applicant has made the following amendments in Revision 1 of the draft DCO in respect of Articles 3(2) and 3(3):** ***(2) Subject to paragraph (3), each numbered work must be situated ~~on the corresponding numbered line or~~ within the numbered area shown on the works plan.*** ***(3) In constructing each numbered work, the undertaker may <u>construct each numbered work anywhere</u> ~~the deviate from the corresponding numbered line shown on the works plan or~~ within the corresponding numbered area shown on the works plan up to the limits of deviation.*** **2) The suggestion that Article 3 should include a sub-article that confirms that the Order does not authorise "associated development" is not necessary. This is because the Secretary of State cannot authorise such development in Wales as he does not have the vires to do so under section 115 of the Planning Act 2008. As the primary legislation prevents this, there is no need for the Statutory Instrument to contain the restriction, which would have no practical effect.**	
21.	**Art 6**	*Article 7 (consent to transfer benefit of this Order), the provisions of this Order have effect solely for the benefit of the undertaker*	What is intended by this article? Has some wording been omitted or, in contrast with the position in **Art 7**, is it the applicant's intention that there should be no transfer of benefit? The **Art 2(1)** definition of "*undertaker*" (16) also implies that there may be circumstances in which a person other than the named undertaker might benefit from the Order? An explanation and a revised form of words would assist.
		Applicant comment: There is text missing from Article 6 – it should read "<u>Subject to</u> ~~A~~<u>a</u>rticle 7 (consent to transfer benefit of this Order)...". Please see Revision 1 of the draft DCO.	
22.	**Art 7**		This makes detailed provision for transfer of benefit, suggesting the need to revise the drafting of **Art 6** (21).

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: Agreed – the Applicant has made the necessary amendments (as per Q. No. 21 above) in Revision 1 of the draft DCO.	
23.	**Art 8**		Should this article be with the other compulsory acquisition articles in Part 5? (It should be noted that whilst some Orders provide for the modification of legislative provisions in a specific article, this task can also be undertaken 'in situ', in an article relevant to the modification sought.) What is the intended relationship between this article and **Art 19(3)**?
		Applicant comment: The Applicant has moved Article 8 to a sub-article in Article 18 (formally 19) in Revision 1 of the draft DCO. The wording in Article 8 is still required as Article 18(3) only relates to the 1965 Act whereas Article 8 confirms that all enactments for the time being in force with respect to compensation for compulsory acquisition under the Order are to apply.	
24.	**Art 11 (1) [Article 10 in Revision 1]**	*11.- (1) The undertaker may, for the purposes of the authorised development <u>or any other development necessary for the authorised development that takes place within the Order land,</u> enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order land and may -*	The EM says that this is one of the powers that is required for the gas connection as well as the authorised development. As CA powers for the gas connection land are subject to prior planning approval having been obtained, arguably the same constraint should also be applied to all powers required for the gas connection, as listed in EM para 4.6?
		Applicant comment: Agreed – please see Article 31 in Revision 1 of the draft DCO.	
25.	**Art 12 [Article 11 in Revision 1]**		Should this article include a provision for compensation for suspension of any private right of way (as with MP 11)?
		Applicant comment: Compensation for suspension of any private right is covered by Article 24(5) (formally Article 25).	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
26.	**Art 15 [Article 14 in Revision 1]**		Does this article have a precedent? The general discussion of guillotine provisions at (6) above is relevant to this provision. Which authority is the traffic authority for the Order land and gas connection land? Does the traffic authority have any comment, e.g. as to its ability to respond within 7 days to a notice of intention under this article?
		Applicant comment: This Article allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads to the extent that is necessary for the purposes of or in connection with the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order land. The Article is not in the general model provisions but there is precedence for it in the The Meaford Gas Fired Generating Station Order 2016 (Article 13). This Order was made on 19 July 2016 and authorises an up to 299MW gas fired generating station. The National Grid (Hinkley Point C Connection Project) Development Consent Order also contains this Article and refers to its use in other made Orders. **The traffic authority is Wrexham County Borough Council. The Applicant is in the process of discussing and agreeing a Statement of Common Ground with the Council, which includes agreeing to the provisions contained in the draft Order.** **The Applicant notes that a consequential amendment is required to Article 38(1) (formally Article 39) - the insertion of "traffic authority," after "highway authority," This has been made in Revision 1 to the draft DCO.**	
27.	**Art 16 [Article 15 in Revision 1]**	*(6) This article does not authorise the entry into controlled waters of any substance whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010*	Regulation 12 does not expressly refer to 'controlled waters'. Would the intention of the article be more clearly addressed by recasting **Art 16(6)** such as *"This article does not authorise any groundwater activity or water discharge activity for which an environmental permit would be required under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010"*

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: Agreed – the Applicant has made necessary amendments in Revision 1 of the draft DCO.	
28.	**Art 16 [Article 15 in Revision 1]**	*(7) In this article—* *(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and*	Is this a comprehensive or wholly appropriate list of organisations responsible for sewers and drains in Wales or the Order land? (It does not refer to e.g. NRW and internal drainage districts?)
		Applicant comment: Reference to the Homes and Communities Agency has been deleted; reference to the Environment Agency has been deleted and replaced with a reference to Natural Resource Wales. Please see Revision 1 of the draft DCO.	
29.	**Art 18 [Article 17 in Revision 1]**	*18.—(1) The undertaker may acquire compulsorily so much of the Order land affecting the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.*	Is the underlined phrase required? If so, why?
		Applicant comment: The Applicant has deleted the underlined phrase in Revision 1 of the draft DCO.	
30.	**Art 18 [Article 17**	*(2) This article is subject to article 19 (compulsory acquisition of rights etc.), article 23 (acquisition of subsoil or airspace only) and article 27 (temporary use of land for carrying out the authorised development).*	Should the article also be subject to **Art 32** (Plots GC, OR, SAT and MGAR)? Should the article expressly exclude the acquisition of Crown land (see e.g. Art 16(3) of the Hirwaun DCO) as part of the 'Order land' is Crown land?

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
	in Revision 1]	**Applicant comment: Article 31 (formally Article 32) is expressed to apply to the whole of Part 5 so the Applicant does not consider that there is a need to refer to it in Article 17.** **The interests owned by the Crown are excluded from the Order land (see the Book of Reference) so the Applicant does not consider that there is a need to state that the Crown's interests are excluded in the DCO.** **Although the Crown does not consider it has an interest (ownership is contested), the Applicant has requested consent from the Welsh Ministers pursuant to s.135 of the PA 2008 in any event. The Applicant will inform the ExA of the Crown's response.**	
31.	**Art 19 [Article 18 in Revision 1]**	*19.—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights or <u>impose a restriction</u> described in the book of reference and shown on the land plans.*	Should the underlined text read *"...impose restrictions...."*?
		Applicant comment: Agreed - the Applicant has made the following amendments: "*the new rights ~~or~~ <u>and</u> impose ~~a~~ <u>the</u> restriction<u>s</u> described in the book of reference and shown on the land plans."* **Please see Revision 1 of the draft DCO.**	
32.	**Art 19 [Article 18 in Revision 1]**		Should the article expressly exclude the acquisition of rights and covenants over Crown land (see e.g. Art 20(6) of the Hirwaun DCO)?
		Applicant comment: The interests owned by the Crown are excluded from the Order land (see the Book of Reference) so the Applicant does not consider that there is a need to state that the Crown's interests are excluded in the DCO. Although the Crown does not consider it has an interest (ownership is contested), the Applicant has requested consent from the Welsh Ministers pursuant to s.135 of the PA 2008 in any event.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
33.	**Art 23 [Article 22 in Revision 1]**	*23.-(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 19 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.*	As drafted, this reads that the undertaker may compulsorily acquire the airspace *"...referred to in paragraph (1)..."*? Is this acquisition necessary for the project to proceed and, if not, could the reference to airspace be removed?
		Applicant comment: The Applicant confirms that it will not be oversailing. Therefore, the words "or the airspace over" have been deleted from this Article in Revision 1 of the draft DCO.	
34.	**Art 23 [Article 22 in Revision 1]**	*(3) Paragraph (2) must not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.*	Should the text read *"[p]aragraph (2) does not prevent...."*?
		Applicant comment: Agreed - the Applicant has made the necessary changes in Revision 1 of the draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
35.	**Art 27 [Article 26 in Revision 1]**	*(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land <u>of the provisions</u> of any power conferred by this article*	Are the underlined words necessary?
		Applicant comment: The Applicant considers that the following amendment is appropriate: *"…arising from the exercise in relation to land <u>of the provisions</u> of ~~any power conferred by~~ this article."* Please see Revision 1 of the draft DCO.	
36.	**Art 27 [Article 26 in Revision 1]**	*(9)(b) acquiring any right in the subsoil <u>or of airspace over</u> any part of the Order land identified in part 1 of the book of reference under article 23 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).*	Should the underlined text read *"...right in the subsoil of or airspace over..."?*
		Applicant comment: Agreed - The Applicant has made the necessary amendments in Revision 1 of the draft DCO. Note that the words "or the airspace over" have also been deleted from this Article.	
37.	**Art 28 [Article 27 in Revision 1]**	*(11) In this article "the maintenance period" means the period of 5 years beginning with the <u>date of final commissioning.</u>*	How is the date of final commissioning to be ascertained by the relevant planning authority and/or affected persons so that the extent of the maintenance period can be calculated?
		Applicant comment: A new Requirement 19 has been inserted into Schedule 2 to the draft DCO requiring the Undertaker to notify the relevant planning authority of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date. The wording follows Requirement 19 of the Hirwaun Generating Station Order 2015.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
38.	**Art 29 [Article 28 in Revision 1]**	*(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference*	Should the text shown underlined just refer to the Order land?
		Applicant comment: Agreed - the Applicant has made the necessary amendments in Revision 1 of the DCO: ***(a) acquire compulsorily the land belonging to statutory undertakers within the Order land ~~shown on the land plans within the limits of the land to be acquired and described in the book of reference~~;…*** ***(c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers ~~as shown on the land plans and described in the book of reference.~~***	
39.	**Art 29 [Article 28 in Revision 1]**	*(b) extinguish or suspend the rights or restrictions of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and*	The land plans do not show statutory undertakers' apparatus, nor is the apparatus described in the BoR? Generally can this paragraph be clarified as it does not read well?
		Applicant comment: Agreed - the Applicant has made the necessary amendments in Revision 1 of the DCO: ***(b) extinguish or suspend the rights or restrictions of, and remove or reposition the apparatus belonging to, statutory undertakers ~~shown on the land plans and described in the book of reference~~ on under over or within the Order land.***	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
40.	**Art 31 [Article 30 in Revision 1]**		Although this article follows MP 32, what is the justification in this application for the limited definition of "public utility undertaker"? (The definition in the Highways Act 1980 refers only to suppliers of gas or hydraulic power, and not, e.g. water or electricity.) Given that limited definition, how can paragraph (1) of the article apply to the removal of public sewers in any event, which is the premise of paragraph (2)?
		Applicant comment: The current wording of Article 30 (formally Article 31) in the draft DCO follows the Model Provisions. Sub-article (1) does not apply to the removal of public sewers as the definition of "public utility undertaker" does not include such an undertaker. Therefore, sub-article (2) is required to cover public sewers.	
41.	**Art 32 [Article 31 in Revision 1]**		Whilst the purpose of the designatory letters (Plots GC, OR, SAT and MGAR) is understood, could the descriptor for this article be amended to ensure that the reader better appreciates the functional relationship between the relevant plots and the provision, for example to "Plots relevant to the proposed gas connection"? In any instance of dispute, a clearer functional title might assist eg an appointed arbitrator to a clearer understanding of the intention of this provision.
		Applicant comment: Agreed – the Applicant has revised the heading in Revision 1 of the draft DCO.	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
42.	**Art 33 [Article 32 in Revision 1]**		EA 1995 s97(8) defines "hedgerow" as including any stretch of hedgerow; should that definition be used directly instead of requiring a cross-reference to the 1995 Act? Consent under the 1997 Hedgerow Regulations is a prescribed consent in Wales under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. Has the local planning authority consented to this provision?
		Applicant comment: The Applicant would propose retaining the reference to the Environment Act 1995 so as to ensure that the DCO cross-refers to the definition of "hedgerow" contained in primary legislation in case the definition is amended at any time in the future. The Applicant is currently agreeing a Statement of Common Ground with the relevant planning authority, which will include agreement to the provisions contained in the draft DCO.	
43.	**Art 37 [Article 36 in Revision 1]**	*37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—* *(a) the access rights of way plan;*	Relevant plan / revision and or document reference numbers should either be included in this provision or within the definition of the relevant documents in **Art 2(1)**. Whichever approach is taken, all documents require to be correctly referenced. If **Art 2(1)** is to be used, are there any documents that would need to be added to and defined in that article? Should the underlined text refer to *"...the access and rights of way plan"?*

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: Article 2(1) defines each of the documents listed in the definition by reference to their revision number and document reference number. Should any of these documents be updated during the course of the Examination, then the definition in Article 2(1) will be updated accordingly. Article 36 (formally Article 37) currently contains all the documents that the Applicant considers should be certified, but this will be kept under review. **The plans contained in Document Reference 2.4 (Examination Library Reference APP-009) are labelled as the "access rights of way plan." Unfortunately, the front cover has inserted an "and" between "access" and "rights". We suggest that the term "access rights of way plan" is retained as this is the term used on the actual plans, which the Secretary of State will be certifying. Revision 1 of the access rights of way plan accompanies this document - the only change being the deletion of "and" on the front cover. The definition of "access rights of way plan" has been updated to refer to "revision 1".**	
44.	**Art 38 [Article 37 in Revision 1]**	*(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by -*	Should the requirement be to make diligent inquiry – as in e.g. s57 PA2008?
		Applicant comment: The Applicant has reviewed all of the DCOs made by the Secretary of State in 2015-16 and all make reference to "reasonable" enquiry. As such, the Applicant would propose that the existing text is retained on the basis that it is the Secretary of State's clear preference in this context. Indeed, the most recent Order made by the Secretary of State, being The Meaford Gas Fired Generating Station Order 2016, made on 19 July 2016, requires "reasonable enquiry" (Article 34(4).	

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
45	**Art 39 [Article 38 in Revision 1]**	*(4) The procedure set out in paragraph 3 of Schedule 9 (procedure for discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 8.*	Is paragraph 3 applicable in its entirety? Should it be limited to its application refusals of consent etc? Paragraph 3(1) includes matters such as disputes over further information requests, which relates specifically to matters raised in earlier paragraphs of the Schedule. The discussion of guillotine provisions in (6) above is also relevant to this provision.
		Applicant comment: Article 38(4) (formally Article 39) has been amended as follows: ***"The procedure set out in paragraph 3(1) of Schedule 9 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement, or approval required under this Order, including such as may be required to the protective provisions contained within Schedule 8. "***	
46	**Schedule 1**	*Work 1A(a) one gas turbine building with up to two gas turbines, and one steam turbine building with one steam turbine, each connected to its own generator with a combined rated electrical output of up to 299 MWe;*	Why does this not refer to a combined gross rated electrical output as with the Hirwaun and Progress DCOs as made? The descriptions of works in **Schedule 1** is relevant to the general discussion of principal, associated and ancillary development in (7) above.
		Applicant comment: The Applicant has changed "combined" in Schedule 1 of Revision 1 of the draft DCO to "gross" and has inserted a definition of "gross rated electrical output" in Article 2(1), which means "*the aggregate of the gross electric power as measured in megawatts at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a)*"	
47.	**R2(1)**		Please include the up to date plan and revision number with each successive revision of the DCO.

Q No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Issue or question
		Applicant comment: Article 2(1) defines each of the plans listed in Table 1 by reference to their revision number and document reference number. Should any of these plans be updated during the course of the Examination, then the definition in Article 2(1) will be updated accordingly. Article 36 (formally Article 37) currently contains all the document that the Applicant considers should be certified, but this will be kept under review.	
48.	**R2(2) Table 2**	*Maximum height (metres) above a site level of approximately 30 metres AOD*	Can this be more precise? Is the site level consistent over the whole of works 1A-1G? Is there or could there be a topographical survey drawing to which this provision could refer?
		Applicant comment: The word "approximately" has been deleted. Please see Revision 1 of the draft DCO.	
49.	**R5**	*(3) If required, remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority.*	Should this read *"Any required remediation..."*?
		Applicant comment: Agreed. The Applicant has made the necessary amendments in Revision 1 of the draft DCO.	

50.	**R8(1)**	*8.—(1) No authorised development may commence until a written scheme setting out the methodology for a watching brief over areas of archaeological interest has been submitted to and approved by the relevant planning authority*	A number of other made Orders refer to a "written scheme of investigation" (or WSI) in this context. Is there an argument for employing this widely used term here? A watching brief is only part of the scheme requirements set out in **R8(2)**. Should **R8(1)** refer instead to "*...the methodology for the investigation of areas of archaeological interest..."* as in MP 6?
		Applicant comment: The Applicant has amended the Requirement so that it refers to "*...the methodology for the investigation of areas of archaeological interest...".* Please see Revision 1 of the draft DCO.	
51.	**R8(3)**	*(3) Any watching brief carried out under the scheme must be by a suitably qualified person or body.*	Should the requirement require that all elements of the scheme should be carried out by a suitably qualified person, e.g. the geophysical survey or any measures taken to protect, record or preserve any significant archaeological remains, and not just the watching brief?
		Applicant comment: Agreed. The Applicant has made the following amendments in Revision 1 of the draft DCO: ***"~~Any watching brief carried out under the scheme~~ The Scheme approved under sub-paragraph (1) must be carried out by a suitably qualified person or body.***	

52.	**R9(1)**	*9.—(1) No authorised development may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The construction traffic management plan must be substantially in accordance with the draft construction traffic management plan in so far as it relates to the relevant numbered work with document reference 6.4.2 set out in appendix 7.5 to volume 4 of the environmental statement and must include the following -*	Would this paragraph be clearer if the "draft construction management plan" was defined later in this requirement or in **Art 2(1)**?
		Applicant comment: The Requirement now reads: "… ***The construction traffic management plan must be substantially in accordance with the draft construction traffic management plan (in so far as it relates to the relevant numbered work) with document reference 6.4.2 set out in appendix 7.5 to volume 4 of the environmental statement and must include the following -***	
53.	**R9(4)**	*(4) During the operation of the generating station no abnormal indivisible loads may be transported into or out of the site without the prior written approval of the relevant planning authority in consultation the relevant highways authority.*	Is the phrase "abnormal indivisible loads" sufficiently precise as to allow enforcement in the event of breach or should it be defined in **Art 2(1)**?
		Applicant comment: The term "abnormal indivisible load" is defined in the Road Vehicles (Authorisation of Special Types) (General) Order 2003. Other DCOs, notably The Meaford Gas Fired Generating Station Order 2016 and the Progress Power and Hirwaun Orders, make reference to the same term but do not include a definition - on that basis the Applicant would not propose to include a definition in the draft DCO.	

54.	**R11(3)**	*(3) Nothing in sub-paragraph (1) precludes a start-up period from 06:30 to 07:00 and a shutdown period from 19:00 to 19:30 on weekdays (excluding public holidays) and start-up period from 06:30 to 07:00 and a shut-down period from 13:00 to 13:30 on Saturdays and public holidays.*	What activities are proposed to be acceptable during the start-up and shutdown periods? Should these activities be more specifically identified in this paragraph?
		Applicant comment: During the start-up and shut-down periods, construction workers are arriving at the site and setting-up or shutting-down equipment and leaving the site. **Prior to daily construction works commencing, the following activities would be typical for a start-up period: personnel arriving and parking on site; personnel changing into work clothing; temporary electrical generators started; temporary work lighting illuminated; pre-work health, safety and co-ordination talks; tools removed from overnight storage and mechanical equipment driven into position.** **Post-daily construction works, the following activities would be typical for a shut-down period: any temporary electrical or air-driven equipment switched off; mechanical equipment driven to their overnight parking positions; tools returned to storage; temporary work lighting switched off; temporary electrical generators switched off, and personnel changing out of work clothes and driving off site.** **Given the Requirement is clear that no construction work can take place outside the hours in sub-paragraph (1), the Applicant does not see a need to include any further wording in sub-paragraph (3). This was the approach followed in the Progress Power (Gas Fired Power Station) Order 2015, Requirement 16.**	
55.	**R12(1)**	*12.—(1) Numbered work 1 must not commence until written details of the surface and foul water drainage system for the operation of the authorised development has been submitted to and approved by the relevant planning authority.*	Why is this requirement limited to Numbered work 1, and to drainage for the operation of the development? Other elements of the authorised development may require drainage, and the works need not necessarily be implemented in numerical order?
		Applicant comment: The Applicant agrees, and has amended the Requirement so that it refers to Numbered works 1 and 2. Please see Revision 1 of the draft DCO.	

56.	**R13(1)**	*13.—(1) Prior to the date of final commissioning written details of the control of artificial lighting during maintenance and operation of the authorised development must be submitted to and approved by the relevant planning authority....*	Is the approval of the RPA intended to be a condition precedent to the commissioning of the development? Should a more consistent phrasing of such requirements be adopted e.g. "*No generation of electricity on a commercial basis is to take place until details of ... have been submitted to and approved by the relevant planning authority"?*
		Applicant comment: The Applicant considers that "prior to" is more appropriate, as otherwise the generating station could be built with artificial lighting, but not generating electricity and there would be no breach of the Requirement. The current drafting gives a timeframe in which to provide the lighting details. Coupled with new Requirement 19, the Applicant does not consider an amendment is necessary.	
57.	**R15**	*15.—(1) Save in respect of the approved plans specified in requirement 2(1), being the works plan and access rights of way plan, regarding any other plans, drawings, documents, details, schemes, statements or strategies which require approval by the relevant planning authority pursuant to any requirement (the "Approved Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph (1).*	Could this requirement be more clearly expressed e.g.: *"15. – (1) Subject to paragraph (2), any plans, drawings, documents details, schemes, statements or strategies which require approval...* *(2) Paragraph (1) does not apply to the works plan and access rights* *(3) Approval under paragraph (1) must not be given.....*
		Applicant comment: Agreed – the Applicant has revised this Requirement in Revision 1 of the draft DCO.	
58.	**R16(3)**		Who determines the appropriate interval for monitoring of the heat use review and or the need for and scope of subsequent reviews? Who determines viability and on what basis? What sanction is available where no scheme or an unsatisfactory scheme is submitted on a subsequent review once the development has been commissioned?

		Applicant comment: The Applicant proposes the method of, and timings of, subsequent reviews for heat use to be contained in the first review submitted under Requirement 16(1), which must be approved by the relevant planning authority. The reviews would contain details as to viability. The Applicant, in its submission, would state whether or not there was a viable opportunity. As the review would be approved by the relevant planning authority, the authority would then either approve or refuse that submission in accordance with the process set out in Schedule 9. **The Applicant has amended the Requirement so that it includes a requirement to comply with the review approved under Requirement 16(1).**	
59.	**R17**		Why is a twenty four month period necessary before submission of details of a decommissioning strategy? Why does the strategy apply to Work No. 1 and not to other works?
		Applicant comment: The existing wording is based on that which appears in The Meaford Gas Fired Generating Station Order 2016 (made on 19 July 2016), The Hirwaun Generating Station Order 2015 and The Progress Power (Gas Fired Generating Station) Order 2015. As such, the Applicant would propose that the wording is retained. Numbered Work 2 is not applicable for decommissioning; only the generating station needs to be decommissioned.	
60.	**Sch 6**	*MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF <u>NEW RIGHTS</u>*	Should this read *"...NEW RIGHTS <u>AND IMPOSITION OF NEW RESTRICTIONS"?</u>*
		Applicant comment: Agreed – the Applicant has made the necessary amendments in Revision 1 of the draft DCO.	
61.	**Sch 6 para 2(2)(a)**	*2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 -* *(a) for the words <u>"land is acquired or taken"</u> there is substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and*	As drafted the word 'from' would be duplicated in the section as amended. Should the words *"land is acquired or taken"* in (a) be amended to read *"land is acquired or taken <u>from"</u>*?

		Applicant comment: Agreed – the Applicant has made the necessary amendments in Revision 1 of the draft DCO.	
62.	**Sch 6 para 5**	*5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section -* *"8. -(1) Where in consequence of the service on a person under section 5 of this Act <u>of a notice to treat in respect of a right over land</u> consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land") -*	Should para 8(1) as substituted also refer to a notice to treat in respect of a restrictive covenant?
		Applicant comment: Agreed – the Applicant has made the necessary amendments in Revision 1 of the draft DCO.	
63.	**Sch 8**		As these provisions are subject to continuing discussions with the statutory undertakers, no queries are raised on them at this stage but may be necessary later in the examination dependent on the progress of those discussions.
		Applicant comment: Noted.	
64.	**Sch 9**		The issues raised at (6) above in relation to guillotine provisions generally are relevant to **Schedule 9**. Additionally, the views of the RPA and any other approval body under the schedule are sought about the appropriateness of the procedures and time limits set out here.
		Applicant comment: Noted and refer to answers provided above.	

65.	**Sch 9 para 1(2)**	*1_(2) Subject to sub-paragraph (3) In the event that the relevant authority does not determine .....*	Should the underlined text be drafted as follows: *"...to sub-paragraph (3) in the "?*
		Applicant comment: Agreed – the Applicant has made the necessary amendments in Revision 1 of the draft DCO.	
66.	**Sch 9 para 3(2)**	*3 (2)(b) The Secretary of State must appoint a person within twenty (20) business days after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;*	The SoS is unlikely to wish to be constrained to a fixed timetable for the appointment of an Inspector. In the made Hirwaun DCO, which contained a similar procedure, the SoS was to appoint "as soon as reasonably practicable". Should the same provision apply in this case? If not, why not?
		Applicant comment: Agreed – the Applicant has made the necessary amendments in Revision 1 of the draft DCO.	
67.	**Sch 9 para 3(2)**		In the Hirwaun DCO as made, the approved periods for submissions and counter-submissions were each 26 days. Does the reduction of this period to 'twenty business days' provide sufficient time?
		Applicant comment: Schedule 9, paras 3(2)(c) and (d) retain the period of twenty six days for submissions and counter-submissions. No amendment necessary.	
68.	**Sch 9 para 4**		Is the SoS for Communities and Local Government (with only a limited remit for action in Wales) the appropriate SoS to perform the discharging authority functions required of the SoS by this Schedule, or should they be performed by the SoS otherwise responsible for the Order (Energy and Climate Change) or the Welsh Ministers who are responsible for the determination of appeals under s78 of the Town and Country Planning Act 1990 (as amended)?

		Applicant comment: Noted. The definition of "Secretary of State" has been deleted in order to bring the DCO in line with the Hirwaun Generating Station Order 2015. The Applicant will contact the Welsh Government to request whether the appeal should be made to the Secretary of State or the Welsh Ministers. The Applicant will update the ExA once a response from the Welsh Government has been obtained.

APPENDIX TWO

LEGAL SUBMISSIONS REQUESTED BY THE EXAMINING AUTHORITY IN RESPECT OF QUESTIONS 7 AND 8 OF ANNEX H

1. **QUESTION 7, ANNEX H**

The applicant acknowledges in the draft DCO and EM the position arising from PA2008 s115 that a DCO for development in Wales may not provide for 'associated development'. An application and hence a DCO in Wales can include provision for the principal development and matters that are genuinely integral to it, and for 'ancillary matters' (PA2008 s120(3)).

Paragraph 3.3 of the EM sets out the applicant's understanding of what is in its view 'an integral part of the NSIP', either as the principal development or as ancillary to it. It refers to paragraphs 4.9-13 of the ExA's report on the Clocaenog Forest Wind Farm Order 2014 ('Clocaenog') as the basis for its approach.

There is still some uncertainty about the boundaries between the principal development and associated development, and between the principal development or associated development and ancillary matters. A number of applications have been decided in Wales in addition to Clocaenog:

- ***Port Talbot Internal Power Generation Enhancement***
- ***Swansea Tidal Lagoon***
- ***South Hook Combined Heat and Power Station***
- ***Mynydd y Gwynt Wind Farm***
- ***Hirwaun Power Station***
- ***Brechfa Forest West Wind Farm***

With reference to these decisions and to particular relevant facts in this application, the applicant and other interested parties are requested to consider and address whether the boundaries provided for in this draft DCO are robust. Careful consideration should be given to the identification of all works in Schedule 1. Legal submissions from the applicant are requested on this point.

Authorised Development and Associated Development

1.1 The application for development consent is in respect of the construction of a generating station that is in Wales and which will have a capacity of more than 50MW.

1.2 Pursuant to section 14(1)(a) of the Planning Act 2008, the construction of a generating station is classed as a nationally significant infrastructure project. Section 31 of the Planning Act 2008 states that development consent "*is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.*"

1.3 All of the development identified in Schedule 1 of the draft Order is development that is or forms part of the construction of a generating station and is within **the Power Station Complex Site, over which the Applicant has an option agreement.**

1.4 The Power Station Complex Site is part of the Scheme (also known as the Wrexham Energy Centre or "**WEC**"). In addition to development that is, or forms part of, the nationally significant infrastructure project, the Scheme contains development that is considered by the Applicant to be "Associated Development". Associated Development is development that supports the nationally significant infrastructure project, but which is not part of the nationally significant infrastructure project.

1.5 Sections 115(2) to (4) of the Planning Act 2008 set out requirements relating to Associated Development. Associated development may not include development in Wales, except for surface works, boreholes or pipes associated with underground gas storage by a gas transporter in natural porous strata (which is not applicable to the Scheme).

1.6 The Gas Connection and the Electrical Connection are considered by the Applicant to be Associated Development and are therefore not part of the application for a development consent order. **This is because the connections are not required for the construction of the generating station itself and therefore do not fall within development covered by section 14(1)(a) of the Planning Act 2008**. They are not development that is, or forms part of, the nationally significant infrastructure project.

1.7 This approach is consistent with paragraph 3.23 of the decision letter for **The Hirwaun Generating Station Order 2015** where the Secretary of State determined that the gas connection and the electrical connection were not part of the generating station and it was not therefore appropriate to include the gas connection and electrical connection in the DCO. The Secretary of State also considered that the grid connection was associated development (and therefore should be excluded from the DCO) in the **Tidal Lagoon (Swansea Bay) Order 2015**.

1.8 Paragraph 3.3 of the Applicant's Explanatory Memorandum sets out the reasons why the Applicant considers all the works listed in Schedule 1 of the DCO form an integral part of the generating station. The Applicant refers to the decisions and reports in the **Clocaenog Forest Wind Farm Order 2014** and the **Brechfa Forest West Wind Farm Order 2013** to support its position. This approach is also consistent with the approach taken in the **Mynydd y Gwynt Wind Farm Order 2015**.

Relationship with the Gas Connection

1.9 In terms of the relationship of the Gas Connection to the authorised development, the Applicant asserts that the Gas Connection is related to the authorised development.

1.10 The Department for Communities and Local Government has published guidance on the meaning of Associated Development. The most recent version is dated April 2013 ("**the Guidance**"). Whilst it has already been made clear that the Gas Connection is Associated Development, the Guidance provides a helpful indication of how the Gas Connection relates to the Power Station Complex.

1.11 The Guidance states that there should be a **direct relationship** between Associated Development and the principal development. It is obvious that there is a direct relationship between the Gas Connection and the generating station – the Gas Connection provides the fuel. The construction and operation of the Gas Connection is also necessary to effect and facilitate the generating station (as the Secretary of State accepted in her decision on the Hirwaun Generating Station Order 2015 - see paragraphs 3.26 and 3.32). Therefore, it is the Applicant's submission that the Gas Connection is related to the authorised development.

Relationship with the Electrical Connection

1.12 The Electrical Connection can also be said to be related to the authorised development - having a direct relationship on the basis that the connection will take the electricity generated to the Grid. The reasoning is as per paragraphs 1.9 to 1.11 above.

Extracts from Orders

1.13 Relevant extracts from the decisions and reports in respect of some of the Orders referred to in the question are set out below.

1.14 Paragraphs 4.9 to 4.13 of the Examining Authority's Report for the **Clocaenog Forest Wind Farm Order 2014** considers whether works relating to access tracks, a sub-station, cable routes and related surface works, two meteorological masts and construction related facilities including four borrow pits, are an integral part of the generating station:

"The proposed authorised project is described in Schedule 1 Parts 1 and 2 of the recommended DCO. In Wales the PA2008 makes limited provision for consent to be given within a DCO for works which are not ancillary to the project, and which would comprise associated development.

The applicant deals with the difference between ancillary and associated development in the Explanatory Memorandum, and concludes that no part of the proposal would constitute associated development. No objections were raised by the Councils or any other IP on this matter. The Department for Communities and Local Government (DCLG) advice states that development should not be treated as associated development if it is actually an integral part of the NSIP concerned, and that it is a matter for the SoS to determine on a case by case basis.

In this case the authorised project would include shared infrastructure such as access tracks, a sub-station, cable routes and related surface works, two meteorological masts and construction related facilities including four borrow pits. Annexes A and B to the DCLG advice include development such as improvements to vehicular access and sub-stations as an example of associated development. However, the advice also states (para 12) that the development listed in the Annexes should not be treated as associated development as a matter of course.

In this case off-site works outside of the adopted highway would be the subject of separate planning applications. The remaining works items are all located within the application site would be integral to the development. The sub-station would sit within the site boundary, and is required for the production of electricity; the borrow pits are also within the site boundary and have no other function than to provide material for the construction of the CFWF; the access tracks are required to connect the main site to the highway network and provide access for the construction and maintenance to each wind turbine.

I therefore consider that each element of the proposed authorised project would be an integral part of the NSIP, for which detailed proposals are included in the DCO application, and without which the generating station would not be able to be constructed and operated. Therefore I consider that there is no associated development within the meaning of s115(2)(a) of the PA2008 included within the application which would require a separate planning permission."

1.15 Paragraphs 4.143 to 4.146 of the Examining Authority's Report for the **Brechfa Forest West Wind Farm Order 2013** also consider whether certain works are an integral part of the generating station. The Secretary of State agreed with this approach at paragraph 19 of the decision letter. The relevant paragraphs from the Examining Authority's Report are set out below:

"*The DCLG guidance is not directly applicable to this project; a DCO consenting an electricity generating station in Wales cannot include associated development.*

• *Nevertheless, some of the analysis in the guidance is relevant.*

• *The list of examples in the guidance is clearly identified as types of development which "may qualify as associated development", with the list acknowledged to be neither exhaustive nor prescriptive.*

• *The guidance advises that development should not be treated as associated development if it is an integral part of the NSIP.*

Given that this is an electricity generating station in Wales the key consideration is whether the individual elements of work can properly be seen as integral to the development of this project.

The applicant addressed this issue directly in the explanatory memorandum to the draft DCO, submitted as part of the initial application (APP4, paras 2.12 et seq). This argued that all works items for which consent is sought are integral to the development. I find the arguments convincing. In particular, I note the consideration of the definition of a generating station in the explanatory memorandum, and that none of the works identified have a purpose other than the construction and/or operation of the wind farm. The sub-station sits within the site boundary and is required for the production of electricity. The borrow pit is also within the site boundary, and has no wider function than providing material for the construction of the wind farm. The access track is required to connect the main site to the highway network for construction, maintenance and in due course removal.

I conclude that each of the elements identified in the draft DCO forms an integral part of the proposed development."

1.16 Similarly, paragraphs 2.0.9 to 2.0.11 of the Examining Authority's Report for the **Mynydd y Gwynt Wind Farm Order 2015** consider whether certain works are an integral part of the generating station:

"*The project would include infrastructure such as an on-site substation, access tracks (some of which are pre-existing), cable routes, a temporary construction compound, meteorological mast, access road improvements and temporary blade storage areas. Annexes A and B to the Department for Communities and Local Government (DCLG) advice include substations and improvements to vehicular accesses as examples of associated development. The advice does, however, state that the development listed in the annexes should not be treated as associated development as a matter of course. Whether a specific element of a proposal is associated with an NSIP for the purposes of s115 of the PA2008 is a matter of fact and degree.*

The Applicant is quite clear that all the proposed works taken together comprise the generating station which is the NSIP [D10-006]. PCC, in its response on this matter, refers to previous NSIP decisions in Wales, which I too have considered: in the Brechfa Forest West Wind Farm Order 2013 a substation and access tracks were included in the Order and the Clocaenog Forest Wind Farm Order 2014 works package also includes similar works to those now proposed [D10-008]. The substation and access tracks in the present case lie clearly within the body of the application site, as shown on the Works Plan [AD-003] and are integral to the project. No other party sought to comment on this issue.

I consider that it is the project as a whole that comprises the electricity generating station NSIP, rather than the individual WTGs. All elements of the proposed project would be integral and ancillary parts of the NSIP. None of them has a purpose other than the construction and/or operation of the wind farm and without them the generating station would not be able to be constructed and operate. As such, I consider that there is no associated development within the meaning of s115(2)(a) of the PA2008 included with the application."

1.17 The Examining Authority was also satisfied that all works applied for in the **South Hook Combined Heat and Power Plant Order 2014** were integral to the project (paragraph 2.29).

1.18 In the **Port Talbot Steelworks Generating Station Order 2015** the Secretary of State agreed with the Examining Authority and concluded that all works applied for were an integral part of the generating station (paragraph 4.16). In this case, the 2.8km electrical connection and gas connection were considered to be integral to the generating station. However, it should be noted that this generating station was not for

the purposes of supplying the National Grid. Instead it was a self-generating power enhancement project for the existing steelmaking plant. All the works were to be located within land owned by the applicant for the existing steelworks site. There was also no significant additional pipe work required for the gas and other connections as the existing gas and water utilities for the site just needed to be extended. The Examining Authority was satisfied that "*both the gas connection (steelmaking process and natural gas) and electrical connection are integral to the proposed development as these connections are fully internal to the existing steelworks site within land wholly owned by the applicant and both are fundamental to the proposed development being able to burn the steelmaking gases to generate electricity for self-use within the steelworks with any surplus power not consumed internally being able to be exported to the national grid*" (paragraph 8.1.10).

1.19 The issue of whether certain works constituted associated development was considered in detail during the Examination of the **Tidal Bay (Swansea Lagoon) Order 2015**, with legal submissions being made by the Welsh Government. As a result, certain works were removed from the DCO during the course of the Examination. The Examining Authority's consultation draft DCO included the works it considered to be part of the NSIP. At paragraph 4.1.37 of the Examining Authority's Report it states that the consultation draft DCO included "*certain works as principal development and others as ancillary works, both within the DCO. The panel's judgement of what should be included was not limited to pure functionality. Other elements were included on the basis that they either contributed to ensuring that the scheme was integrated with its surroundings, secured appropriate mitigation or that they were integral elements of structures that formed essential parts of the generating station*."

1.20 The Applicant has taken into account the decisions referred to above and maintains its position that all the works listed in Schedule 1 of the draft Order should be looked at holistically in being required for the construction of a generating station.

2. **QUESTION 8, ANNEX H**

An issue related to (7) above is that the draft DCO contains CA powers for a gas connection that is acknowledged by the applicant to be associated development. The physical works for the gas connection have been excluded from the draft DCO and are the subject of a separate application to Wrexham County Borough Council under the Town and Country Planning Act 1990 (as amended).

The applicant and other interested parties are requested to consider and address whether the DCO can appropriately and lawfully provide for this element of CA, again with reference to other applications decided in Wales. Legal submissions from the applicant are requested on this point.

2.1 For the reasons explained in answering question 7, the Applicant has submitted a separate planning application for the Gas Connection to the local planning authority, Wrexham County Borough Council, made under the Town and Country Planning Act 1990 (TCPA 1990).

2.2 Paragraph 122(2)(b) of the Planning Act 2008 states that a DCO may include provision authorising the compulsory acquisition of land that "*is required to facilitate or is incidental to*" the nationally significant infrastructure project.

2.3 Whilst the DCO Application does not apply for development consent in respect of the Gas Connection or the Electrical Connection, the draft Order does include, pursuant to section 122(2)(b) of the PA 2008, powers for the acquisition of the necessary land rights required for the Gas Connection.

2.4 This is consistent with the Secretary of State's decision for the **Hirwaun Generating Station Order 2015**. At paragraph 3.26 of the decision letter for the Hirwaun Generating Station, the Secretary of State confirmed that compulsory acquisition powers for Associated Development could be included if the land is required to "facilitate" or is "incidental to" the nationally significant infrastructure project.

2.5 The Applicant considers that the land rights required to construct, operate, maintain and protect the Gas Connection, which is necessary for the generating station so that it can generate electricity, are required to **facilitate** the Power Station Complex Site, being the nationally significant infrastructure project. Therefore, the Secretary of State has the necessary vires to grant compulsory acquisition powers for development that is not being authorised in the development consent order, as has been demonstrated via The Hirwaun Generating Station Order 2015.