



**The Planning Inspectorate**  
**Yr Arolygiaeth Gynllunio**

**The Planning Act 2008**

**Wrexham Energy Centre**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the  
Secretary of State for Business, Energy and Industrial Strategy**

---

**Examining Authority**

**Rynd Smith LLB MA MRTPI FRSA**

**18 April 2017**

This page intentionally left blank



**ERRATA SHEET – Wrexham Energy Centre - Ref. EN010055**

**Examining authority's Report of Findings and Conclusions and  
Recommendation to the Secretary of State for the Business, Energy  
and Industrial Strategy, dated 18 April 2017**

**Corrections agreed by the Examining Authority prior to a decision  
being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
45	4.5.13	'sough'	'sought'
47	4.5.23	'take account to'	'take account of'
A3 Appendix C	-	'WWU' not defined	Include 'WWU' & 'Wales & West Utilities'

## **Examining Authority's findings and conclusions and recommendation in respect of Wrexham Energy Centre**

### **File Ref EN010055**

The application, dated 18 March 2016, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on 18 March 2016.

The Applicant was Wrexham Power Ltd (company number 06762265).

The application was accepted for examination on 13 April 2016. The examination of the application began on 19 July 2016 and was completed on 19 January 2017.

The Proposed Development comprises the development, construction and operation of a combined cycle gas generating station of up to 299 MWe installed capacity (the Power Station Complex) at Kingmoor Park South, part of Wrexham Industrial Estate, near Wrexham in Wales. The Power Station Complex comprises a gas turbine building housing up to two gas turbines and a steam turbine building with one steam turbine, each connected to a generator, up to two exhaust stacks, up to two heat recovery systems, an air-cooled condenser, switchgear housed in a switchgear room, an administrative and control building, a heat network interface building, a 123kV switchyard, up to three transformer compounds with up to three transformers, other integral plant and infrastructure. The application provides for internal site roads within the Power Station Complex, permanent and temporary construction and laydown areas, and for measures required for site drainage, natural environment and landscape mitigation.

The Proposed Development requires a connection to the gas transmission system. The development of this connection does not form part of the application. However, the application includes provision in the DCO for the compulsory acquisition and or temporary possession of land for a gas connection alignment and related powers to facilitate development. The Proposed Development requires an electrical connection to the distribution network for export. However, as this would be provided underground and pursuant to permitted development powers held by the distribution network operator, the DCO includes no provisions in respect of this connection.

### **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

# Report Contents

<b>1</b>	<b>INTRODUCTION .....</b>	<b>5</b>
1.1	BACKGROUND .....	5
1.2	STRUCTURE OF REPORT .....	6
1.3	THE EXAMINATION AND PROCEDURAL DECISIONS .....	7
1.4	HABITATS REGULATIONS ASSESSMENT .....	9
1.5	SITE INSPECTIONS .....	10
1.6	LOCAL IMPACT REPORT .....	10
1.7	STATEMENTS OF COMMON GROUND .....	11
1.8	OTHER CONSENTS REQUIRED.....	11
1.9	OTHER PROCEDURAL MATTERS .....	13
<b>2</b>	<b>MAIN FEATURES OF THE PROPOSAL AND SITE .....</b>	<b>14</b>
2.1	THE APPLICATION AS MADE.....	14
2.2	THE PROPOSED DEVELOPMENT SITE.....	16
2.3	THE APPLICATION AT THE CLOSE OF EXAMINATION .....	17
2.4	RELEVANT PLANNING HISTORY .....	18
<b>3</b>	<b>LEGAL AND POLICY CONTEXT .....</b>	<b>20</b>
3.1	INTRODUCTION.....	20
3.2	PLANNING ACT 2008.....	20
3.3	NATIONAL POLICY STATEMENTS.....	21
3.4	WELSH LEGISLATION, POLICY AND GUIDANCE .....	23
3.5	EUROPEAN DIRECTIVES AND RELATED UK LEGISLATION .....	26
3.6	OTHER LEGAL AND POLICY PROVISIONS .....	29
3.7	MADE DEVELOPMENT CONSENT ORDERS .....	31
3.8	TRANSBOUNDARY EFFECTS .....	32
3.9	OTHER RELEVANT POLICY STATEMENTS .....	32
3.10	LOCAL IMPACT REPORT (LIR).....	32
3.11	THE DEVELOPMENT PLAN AND LOCAL POLICY BACKGROUND .....	33
3.12	THE SECRETARY OF STATE’S POWERS TO MAKE A DCO .....	33
<b>4</b>	<b>FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES .....</b>	<b>35</b>
4.1	INTRODUCTION.....	35
4.2	SOURCES OF INFORMATION AND RESPONSES TO THEM.....	35
4.3	MAIN ISSUES IN THE EXAMINATION .....	39
4.4	INTRODUCTION TO LAND AND LAND USE CONSIDERATIONS .....	42
4.5	OPTION DEVELOPMENT .....	43
4.6	SITING AND PRIMARY LAND REQUIREMENT .....	48
4.7	THE GAS CONNECTION .....	52
4.8	THE ELECTRICITY CONNECTION .....	56
4.9	OTHER STRATEGIC PROJECTS AND PROPOSALS .....	60
4.10	INTRODUCTION TO ENVIRONMENTAL EFFECTS .....	61
4.11	LANDSCAPE AND VISUAL IMPACTS .....	61
4.12	HISTORIC ENVIRONMENT .....	67
4.13	DESIGN .....	69
4.14	BIODIVERSITY, ECOLOGY AND NATURAL ENVIRONMENT .....	70
4.15	AIR QUALITY AND EMISSIONS, DEBRIS AND WASTE.....	73

4.16	COMBINED HEAT AND POWER (CHP) READINESS .....	78
4.17	WATER ENVIRONMENT .....	79
4.18	RISK AND HAZARD MANAGEMENT .....	81
4.19	NOISE AND VIBRATION .....	84
4.20	TRANSPORTATION AND TRAFFIC .....	88
4.21	SOCIO-ECONOMIC EFFECTS .....	89
4.22	OTHER MATTERS .....	91
<b>5</b>	<b>FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS .....</b>	<b>92</b>
5.1	INTRODUCTION .....	92
5.2	PROJECT LOCATION .....	92
5.3	HRA IMPLICATIONS OF THE PROPOSED DEVELOPMENT .....	93
5.4	ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN-COMBINATION .....	94
5.5	CONCLUSIONS .....	95
<b>6</b>	<b>THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT .....</b>	<b>97</b>
6.1	INTRODUCTION .....	97
6.2	CONCLUSIONS ON PLANNING ISSUES .....	97
6.3	THE PLANNING BALANCE .....	99
<b>7</b>	<b>COMPULSORY ACQUISITION AND RELATED MATTERS.....</b>	<b>101</b>
7.1	INTRODUCTION.....	101
7.2	THE REQUIREMENTS OF THE PLANNING ACT 2008 .....	101
7.3	THE REQUEST FOR COMPULSORY ACQUISITION (CA) AND TEMPORARY POSSESSION (TP) POWERS .....	102
7.4	THE PURPOSES FOR WHICH THE POWERS ARE REQUIRED .....	103
7.5	EXAMINING THE CASE FOR CA AND TP .....	104
7.6	CONSIDERATION OF CA AND TP ISSUES .....	107
7.7	THE EXA'S OVERALL CA AND TP CONCLUSIONS .....	126
<b>8</b>	<b>DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS.....</b>	<b>128</b>
8.1	INTRODUCTION.....	128
8.2	EXAMINATION OF THE DCO .....	129
8.3	THE STRUCTURE AND OPERATION OF THE DRAFT DCO .....	131
8.4	UNCONTENTIOUS CHANGES IN THE EXAMINATION .....	136
8.5	CHANGES SUBJECT TO CONTENTION .....	137
8.6	OTHER TECHNICAL DRAFTING CHANGES .....	140
8.7	LEGAL AGREEMENTS AND OTHER CONSENTS .....	141
8.8	NUISANCE.....	141
8.9	CONCLUSIONS ON THE DCO .....	142
<b>9</b>	<b>SUMMARY OF FINDINGS AND CONCLUSIONS .....</b>	<b>143</b>

## **Appendices Contents**

**APPENDIX A: EVENTS IN THE EXAMINATION**

**APPENDIX B: EXAMINATION LIBRARY (INCLUDING THE RIES)**

**APPENDIX C: LIST OF ABBREVIATIONS**

**APPENDIX D: RECOMMENDED DCO**

# **1 INTRODUCTION**

## **1.1 BACKGROUND**

1.1.1 The application for the Wrexham Energy Centre (The Proposed Development) [APP-001 to APP-156] was submitted by Wrexham Power Limited (the Applicant) to the Planning Inspectorate on 18 March 2016 under section 31 of the Planning Act 2008 (PA 2008) and accepted for Examination under section 55 of the PA 2008 on 13 April 2016.

1.1.2 The proposed development comprises:

- The Power Station Complex, being a combined cycle gas turbine generating station with a rated electrical output of up to 299 MWe, incorporating 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, up to two exhaust gas emission flue stacks, up to two heat recovery steam generator buildings with up to two heat recovery steam generators, an air cooled condenser, switchgear room, administrative/control building, heat network interface building, 132kV switchyard, up to three transformer compounds with up to three transformers, other plant and site infrastructure
- Internal site roads within the Power Station Complex;
- A temporary construction laydown area required during construction;
- A permanent laydown area for use during construction and subsequently to be used for maintenance activities during operation;
- Works for the foul, surface water and trade effluent drainage for the Power Station Complex; and
- Landscaping including a cluster of three new ponds (also to form part of the drainage strategy), a new woodland belt and bund, and a grassland area.

1.1.3 The location of the Proposed Development is shown in the Environmental Statement (ES) [APP-047 to APP-152] and Land Plans, final updated versions of which were received at Deadline 9 [REP9-006]. The site lies wholly in Wales.

1.1.4 The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Department of Communities and Local Government (DCLG) in its decision to accept the application for Examination in accordance with section 55 of PA2008 [PD-002][PD-004].

1.1.5 On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-001] that the proposed development is an NSIP as it includes an onshore generating station in England or Wales with a capacity of more than 50MW, is within s15 of



PA2008, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(a) and 15(2) of PA2008.

- 1.1.6 The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.1.7 On 28 March 2014, the Applicant submitted a Scoping Report to the Secretary of State (SoS) under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.
- 1.1.8 On 12 May 2014 the Planning Inspectorate provided a Scoping Opinion [APP-108]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [APP-047 to APP-152].
- 1.1.9 Environmental impacts have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant. Information provided by the Applicant throughout the Examination in response to my questions and matters raised by IPs are addressed in this report.
- 1.1.10 I am satisfied that the ES met the requirements of Schedule 4 of the EIA regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.
- 1.1.11 The application was accepted for examination on 13 April 2016 [PD-004]. Forty relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-040].
- 1.1.12 On 12 May 2016, (I) Rynd Smith was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [PD-005].
- 1.1.13 On 10 June 2016 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-005].

## **1.2 STRUCTURE OF REPORT**

- 1.2.1 The report is structured as follows:
- **Chapter 1-** introduces the application and summarises the Examination and procedural decisions;

- **Chapter 2** - sets out the main features of the Proposed Development;
- **Chapter 3** - summarises the legal and policy context applicable to consideration of the application;
- **Chapter 4** - sets out the principal issues at the outset of the Examination, discusses under topic headings the relevant and important issues that were examined, and records conclusions;
- **Chapter 5** - provides findings and conclusions in relation to the Habitats Regulations;
- **Chapter 6** - concludes on the case for development consent;
- **Chapter 7** - sets out and concludes on compulsory acquisition, temporary possession and related matters;
- **Chapter 8** - considers changes made to the DCO during the Examination and explains the recommended DCO; and
- **Chapter 9** - presents a summary of conclusions and the main recommendation to the SoS.

1.2.2 The following appendices are included within this Report:

- **Appendix A** - details the main events occurring during the Examination and the main procedural decisions taken;
- **Appendix B** - contains the Examination Library which lists the documents submitted by the Applicant and others, and identifies the references used in this report;
- **Appendix C** - is a list of abbreviations used in this report; and
- **Appendix D** - contains the DCO which I recommend the SoS should make (the ExA's recommended DCO).

1.2.3 Given that the application and Examination material have been published online, this report does not contain extensive summaries of all the representations, although regard has been had to them in my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoS against the PA2008 tests.

### **1.3 THE EXAMINATION AND PROCEDURAL DECISIONS**

1.3.1 The Examination began on the 19 July 2016 and concluded on 19 January 2017.

1.3.2 On 24 June 2016, I wrote to all Interested Parties (IPs), Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) inviting them to the Preliminary Meeting (PM) and an Issue Specific Hearing (ISH) on the draft DCO [PD-006], outlining:

- the arrangements and agenda for the PM;
- notification of first hearings;
- agenda for the ISH on the draft DCO;
- my initial assessment of the principal issues;
- the draft Examination Timetable;
- availability of RRs and application documents; and
- my procedural decisions.

1.3.3 Arrangements for Welsh speakers included that:

- submissions in Welsh would be accepted into the Examination;
- a Welsh-speaker was available to assist all parties and attended accompanied site inspections; and
- simultaneous translation at the PM and hearings provided any party with the opportunity to make representations in Welsh if they wished.

I am satisfied that a full opportunity to participate in the Examination through the medium of Welsh was provided. As matters transpired, no submissions were made in Welsh and no requests were made to use the facilities provided by the Welsh-speaking assistant or the simultaneous translation service.

**PRELIMINARY MEETING AND HEARINGS**

1.3.4 The PM took place on 19 July 2016 at Redwither Tower, First Avenue, Redwither Business Park, Wrexham Industrial Estate, Wrexham. An audio recording [EV-002] and a note of the meeting [PD-007] were published on the Planning Inspectorate National Infrastructure website<sup>1</sup>.

1.3.5 My procedural decisions and the Examination timetable were provided in the Rule 8 letter [PD-008], dated 2 August 2016.

1.3.6 I held a number of hearings under s91, s92 and s93 of PA2008 to ensure the thorough examination of the issues raised by the application.

1.3.7 ISHs under s91 of PA2008 were held at Redwither Tower, Wrexham Industrial Estate, Wrexham, a location within walking distance of the application site.

1.3.8 ISHs were held on the subject matter of the draft DCO on:

- 19 July 2016 [EV-003 to EV-004];
- 28 September 2016 [EV-015 to EV-016]; and
- 24 November 2016 [EV-032 to EV-033]

1.3.9 ISHs were held on environmental and other issues on

- 28 and 29 September 2016 [EV-017 to EV-021]; and
- 23 November 2016 [EV-028 to EV-030].

The environmental and other issues ISHs addressed the following subject matters:

- site selection and assessment approach;

---

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/wales/wrexham-energy-centre/>

- air quality effects;
- biodiversity effects;
- gas and electricity connections;
- historic environment effects;
- landscape, visual and related effects;
- residential amenity effects;
- water environment; and
- any other relevant considerations.

1.3.10 Compulsory Acquisition Hearings (CAH) were held under s92 of PA2008 at Redwither Tower on:

- 29 September 2016 [EV-023 to EV-024]; and
- 24 November 2016 [EV-031].

All persons affected by compulsory acquisition (CA) or temporary possession (TP) proposals (Affected Persons or APs) were provided with an opportunity to be heard.

1.3.11 An Open Floor Hearing (OFH) was held under s93 of PA2008 at Redwither Tower on the evening of 28 September 2016 [EV-022]. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise.

#### **WRITTEN QUESTIONS**

1.3.12 I posed two rounds of written questions.

- First written questions (FWQ) [PD-009] and procedural decisions were set out in the Rule 8 letter [PD-008], dated 2 August 2016.
- Second written questions (SWQ) [PD-011] were issued on 21 October 2016.

1.3.13 Two requests for further information and comments under Rule 17 of the EPR were issued on:

- 12 December 2016 [PD-014]; and
- 9 January 2017 [PD-017 and PD-018].

1.3.14 The Rule 17 of 9 January 2017 [PD-017] was notified to IPs under Rule 8(3) of EPR to facilitate this final request for further information.

### **1.4 HABITATS REGULATIONS ASSESSMENT**

1.4.1 Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) relating to European sites (the HRA process). Following assessment and advice, the Applicant took the view that the Proposed Development did not give rise to any likely significant effects on European sites. It provided a

No Significant Effects Report (NSER) with the application to set out this position [APP-046].

1.4.2 I examined matters in relation to potential effects on European sites with a potential bearing on HRA and towards the end of the Examination I produced a Report on the Implications for European Sites (RIES) to summarise the available environmental information [PD-016]. This compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs, up to and including the 12 December 2016.

1.4.3 The RIES was issued on 12 December 2016 to all IPs. Comments on the RIES were requested for Deadline 7, 4 January 2017, as set out in the Examination Timetable [PD-008]. Reasoning and conclusions drawn from the NSER, the RIES and all relevant related evidence are set out in Chapter 5.

## **1.5 SITE INSPECTIONS**

1.5.1 Unaccompanied site inspections took place on:

- 25 and 26 May 2016 [EV-001];
- 28 September 2016 [EV-014];
- 22 November 2016 [EV-026];
- 23 and 24 November 2016 [EV-027]; and
- 18 January 2017 [EV-034].

1.5.2 Accompanied Site Inspections (ASIs) at locations and on routes planned with regard to the ES and suggestions sought from IPs took place on:

- 27 September 2016 [EV-013;] and
- 22 November 2016 [EV-025]

These enabled me to access land and features, relevant to my consideration of the application and its effects, that is private or where I needed accompanying parties to identify relevant facts and features.

## **1.6 LOCAL IMPACT REPORT**

1.6.1 Wrexham County Borough Council (WCBC) is the relevant local authority for the Proposed Development. WCBC submitted a draft Local Impact Report (LIR) for Examination Deadline 1 (DL1) [LIR-001]; a subsequent update on the status of the LIR was provided at DL2 [REP2-005].

1.6.2 Section 60(3) of PA2008 defines an LIR as a "*report in writing giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area)*". Matters raised in the LIR are discussed in Chapters 2, 3, 4 and 9 of this report and have been fully taken into account.

## **1.7 STATEMENTS OF COMMON GROUND**

1.7.1 An Update on Statements of Common Ground was submitted by the Applicant at DL1 [REP1-034] which detailed the progress made by the Applicant on agreeing Statements of Common Ground (SoCG) with WCBC, Natural Resources Wales (NRW) and the Welsh Government/Cadw.

1.7.2 During the Examination the Applicant submitted signed SoCGs with:

- Welsh Government/Cadw on historic environment at DL2 [REP2-016];
- NRW at DL6 [REP6-008]; and
- WCBC at DL7 [REP7-018].

The completed SoCGs have been fully taken into account throughout this report.

## **1.8 OTHER CONSENTS REQUIRED**

1.8.1 In addition to the consents required under PA2008 (which is the subject of this report), the Applicant will require other consents to construct operate and maintain the Proposed Development. As set out by the Applicant in section 24 of the Application Form [APP-001] and the details of Other Consents and Licences [APP-045], the following consents, licences and permits are expected to be required:

- WCBC: Planning Permission for the gas connection (Town and Country Planning Act 1990 and amended (TCPA1990)) (to the extent that this has not already been granted);
- Office of Gas and Electricity Markets (OFGEM): Electricity Generation Licence (Electricity Act 1989);
- WCBC: Building Regulations Approval (Buildings Regulations 2010);
- NRW: Environmental Permit (Environmental Permitting (England and Wales) Regulations 2010);
- NRW: European Protected Species Licences (Conservation of Habitats and Species Regulations 2010);
- Health and Safety Executive (HSE): Construction-related Health and Safety Consents (Health and Safety at Work Act 1974 and subsidiary legislation (including the Pressure Systems Safety Regulations 2000));
- HSE: Operation related Health and Safety Consents (Health and Safety at Work Act 1974 and subsidiary legislation (including the Pressure Systems Safety Regulations 2000));
- HSE/NRW: Control of Major Accident Hazards (CoMAH) Major Accident Prevention Policy (MAPP)/Safety Report (CoMAH Regulations 2015 (as amended));
- WCBC: Planning (Hazardous Substances) Consent (Planning (Hazardous Substances) Act 1990) & (Planning (Hazardous Substances)(Wales) Regulations 2015);

- Department for Transport and Highways England (within England) and Welsh Government /relevant Trunk Road Agent) within Wales and the Local Highway Authority: Permit for Transport of Abnormal Indivisible Loads (The Road Vehicles (Authorisation of Special Types)(General) Order 2003);
- NRW: Permit to emit CO<sub>2</sub> (Greenhouse Gas Emissions Trading Scheme Regulations 2012);
- HSE: Safety Regulations Compliance - General (Pipelines Safety Regulations 1996) Gas Safety (Management) Regulations 1996);
- WCBC: Section 61 Consent Control of Noise on Construction Sites (Control of Pollution Act 1974);
- Welsh Government /relevant Trunk Road Agent and Local Highway Authority: Temporary Road Traffic Orders and other Street Works Consents (Road Traffic Regulation Act 1984)(New Roads and Street Works Act 1991)(Traffic Management Act 2004);
- WCBC: Sustainable Drainage Approval (Schedule 3 to the Flood and Water Management Act 2010);
- Dee Valley Water Plc: Mains Water Supply (Section 55 of the Water Industry Act 1991);
- Welsh Water / Dwr Cymru (WW): Trade Effluent Discharge Consent (Section 118 of the Water Industry Act 1991);
- NRW: Surface Water Discharge Consent (Environmental Permitting (England and Wales) Regulations 2010);
- WW: Foul Water Sewer Requisition (Section 98 of the Water Industry Act 1991 and Water Act 2003);
- WCBC: Consent Licence in relation to Street Works (Section 50 of the New Roads and Street Works Act 1991); and
- NRW: Consent in Relation to Structures in, over or under a main river (Section 109 of the Water Resources Act 1991).

I consider and reach conclusions on the interaction between these consents and the DCO for the Proposed Development in Chapter 8 of the report (the DCO) below, at Section 8.7.

- 1.8.2 Applications for planning permission were and are proposed to be made to WCBC under TCPA1990 for the gas connection alignment. The first application to WCBC was made on 20 April 2016 (under reference P/2016/0358). It provides for the development of a gas connection within the land shown in the Land Plans [REP9-006]. Planning permission was granted during the Examination period on 5 September 2016, conditionally on the SoS' consideration of this application (condition 15). The planning permission decision letter is an examination document [REP2-010 - Annex A].
- 1.8.3 During the Examination, issues were raised in respect of the approach that would be taken to a portion of the gas connection alignment at Pickhill Farm, Cross Lanes, relating to Plots GC12, 12A and 12B on the Land Plans [REP9-006], where planning permission has been granted

for a solar farm astride the proposed alignment (see paragraphs 2.4.4 - 5 below). The Applicant has sought a commercial agreement<sup>2</sup> to vary the gas connection alignment in this location in order to avoid the solar farm [REP3-017 Appendix 1] but this is not yet concluded. Further to this, a separate application for planning permission to WCBC is necessary to provide for the varied route. At the closure of the Examination, this application had not been determined. The matters arising from the solar farm and the prospective gas connection alignment variation at Pickhill Farm are discussed further in Chapters 2, 4, 7 and 8 of this report.

## **1.9 OTHER PROCEDURAL MATTERS**

- 1.9.1 There have been no requests to become or to withdraw from being an Interested Party (s102A, s102B and s102ZA PA2008).
- 1.9.2 Earthworm Energy Ltd. (Earthworm) is the beneficiary of planning permission for and developer of a solar farm at Pickhill Bridge Farm, on land owned by and subject to an agreement with Mr Gerard Owen. Mr Owen's land is proposed to be crossed by a gas connection alignment provided for in the DCO and is therefore subject to proposed CA and TP powers. Mr Owen was AP but did not object to the application, make a RR or participate in the early stages of the examination. Because Earthworm did not have a registerable interest in land during the Examination period, it was not entitled to be an AP. It did not make a RR. Nevertheless, it had made a representation to WCBC in respect of the Applicant's separate application for planning permission for the gas connection alignment. That representation was copied to the Examination by Earthworm at DL1 [REP1-004].
- 1.9.3 That representation identified that the passage of the gas connection alignment through the consented solar farm could harm the operation of the solar farm. Having considered it, on that basis, I decided to accord Earthworm an opportunity to participate in the Examination as an 'other person', effectively treating them as if they were an AP. I did so in recognition of their prospective interest in the effect of the proposed CA and TP powers on their development and use of land. By the end of the examination, this interest had become concrete, to the extent that their development had commenced.

---

<sup>2</sup> A contractually binding agreement between parties



## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.1 THE APPLICATION AS MADE**

2.1.1 The Applicant submitted an application for the construction and operation of a combined cycle gas turbine generating station with an electrical output of up to 299 MWe [APP-001]. The Applicant company is special purpose joint venture between Glenfinnan and St. Modwen. The application is sited on land known as Kingmoor Park South, better described in Section 2.2 below.

2.1.2 The Proposed Development comprises:

- a combined cycle gas turbine generating station incorporating 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 299MW; up to two exhaust gas emission flue stacks; up to two heat recovery steam generator buildings with up to two heat recovery steam generators; air cooled condenser and balance of plant;
- a temporary construction laydown and car parking area required during construction and a permanent operational and maintenance laydown area required during operation;
- foul, surface water and trade effluent drainage for the Power Station Complex comprising the construction and maintenance of three surface water retention ponds and vortex flow control and drainage for foul, surface water and trade effluent;
- a vegetation buffer, including tree planting, other boundary treatments and ecological mitigation as part of the embedded mitigation for the Power Station Complex; and
- works to alter and upgrade the existing access to Kingmoor Park to provide suitable access to the Power Station Complex.

#### **Scope of the proposed works**

2.1.3 The Proposed Development is described in Schedule 1, Part 1 of the recommended Development Consent Order (DCO) (Appendix D). In Wales, Planning Act 2008 (as amended) (PA2008) makes only the most limited provision for consent to be given for works not ancillary to the Proposed Development that would comprise associated development for the purposes of PA2008.

2.1.4 All the proposed works that the Applicant considers should be viewed as either integral or ancillary to the development are described in sections 2, 3 and 4 of the Explanatory Memorandum (EM)[APP-034].

2.1.5 Section 3 of the EM [APP-034] explains that the DCO does not seek consent for any associated development, as all aspects of the authorised development are considered by the Applicant to be integral to the scheme, a matter to which I return in paragraphs from 2.1.9 below.

## **Gas connection**

- 2.1.6 A description of the gas connection proposals is set out in the Gas Connection Statement [APP-155]. As set out in paragraph 1.8.3 above, consent has been sought for this under the Town and Country Planning Act 1990 (as amended) (TCPA1990) via a planning application to the local planning authority, WCBC. Planning permission for the gas connection alignment was granted by WCBC during the Examination period on 5 September 2016 (under reference P/2016/0358). Compulsory acquisition (CA) and temporary possession (TP) powers over the land required for the gas connection alignment are however being sought as part of this application. Matters relevant to the passage of the gas connection alignment through the Pickhill Bridge Farm solar farm have led to proposals for a possible diversion from the consented gas connection alignment by way of a commercial agreement and a further application for planning permission pursuant to TCPA1990. These matters are expanded on further in Chapters 4, 7 and 8 below.

## **Grid connection**

- 2.1.7 The Proposed Development would export to the electricity distribution network via a new 132kV connection alignment. A connection offer to the Applicant from the distribution network operator SP Energy Networks (the DNO) to export electricity into their 132kV network via underground cables from the Power Station Complex Site to the Legacy Grid Substation.
- 2.1.8 Approval of the electrical connection would be secured through the appropriate separate consenting regime if required, although it should be noted that the DNO enjoy substantial permitted development powers that can be used to construct such an alignment. The Grid Connection Statement [APP-154] and its subsequent revision [OD-006 and OD-007] provide further information on the proposed connection. It follows that the draft DCO makes no provision for the electrical connection alignment.

## **Integral, associated and ancillary development**

- 2.1.9 I consider that the works applied for are part of the generating station and would be integral and ancillary parts of the NSIP. No works applied for have a purpose other than the construction and/or operation of the combined cycle gas turbine facility and without them the generating station would not be able to be constructed and operate. No IPs argued that any part of the application should be considered to be associated development. This was a matter that I raised at the first ISH into the DCO [EV-003 and EV-004] and is addressed in the Applicant's summary of oral submissions [EV-006 - Appendix 2].
- 2.1.10 I also note that the DCO includes CA, TP and related powers relating to land that is required for the gas connection alignment. However, I

am conscious that the approach taken in framing these provisions is consistent with that taken in a number of made Orders in Wales (outlined in Chapter 3 below at Section 3.7): a matter that I put to the Applicant and was discussed at the first ISH into the DCO [EV-003 and EV-004]. Having considered the matters raised, I agree with the approach outlined by the Applicant in its oral submissions at that hearing [EV-006 - Appendix 2] and am content that it is appropriate to provide for CA, TP and related powers relating to such land.

- 2.1.11 As such, I am content that no associated development within the meaning of s115(2)(a) of PA2008 is included within the application.

## **2.2 THE PROPOSED DEVELOPMENT SITE**

- 2.2.1 The Proposed Development would be located on land at the Wrexham Industrial Estate (WIE). The site is described in Chapter 4 of the Environmental Statement (ES): The Proposed Development [APP-052]. The entirety of the Proposed Development lies within the administrative boundary of Wrexham County Borough Council (WCBC) which is also the relevant local planning authority. The Order Land covers an area of approximately 36.4 ha and comprises the land required for the Power Station Complex and the Gas Connection.
- 2.2.2 The Power Station Complex Site is situated to the east of Bryn Lane in the north-east part of WIE, on Kingmoor Park South, on land approximately 19.5ha in size and which is previously developed land.
- 2.2.3 Part of an Owens Corning fibreglass factory complex occupied the western and south eastern areas of the Power Station Complex. The western area of the Power Station Complex Site is largely laid to hard standing, having been the former staff car park for the fibreglass factory and is broadly of level terrain.
- 2.2.4 The south-eastern area of the Power Station Complex Site (closest to the B5130) was formerly part of the fibreglass factory and used to accommodate a number of large structures and silos which have now been demolished. This area comprises a raised area of scrub grassland with spoil mounds and two ponds and an extensive area of hard standing close to the eastern boundary. A further, lined, pond is located in the west of this area (adjacent to the south-eastern corner of the Power Station Complex). The terrain is undulating and generally slopes down to the east.
- 2.2.5 The remainder of the Power Station Complex Site is open fields with hedgerows defining three main fields. This land includes land that is understood to have been used as a recreational facility (sports fields) associated with the former Owens Corning facility. The terrain gently slopes down to the north-east towards a pond in the north-eastern area. A ditch and an overgrown hedgerow form the eastern boundary of the Power Station Complex Site. The ditch-water flows into the small brook immediately to the north of the site.

- 2.2.6 The western boundary of the Power Station Complex Site is formed by Bryn Lane. Immediately to the west of Bryn Lane is a Kelloggs food processing complex.
- 2.2.7 To the south of the Power Station Complex Site is a logistics warehouse and distribution centre operated by Norbert Dentressangle.
- 2.2.8 The Power Station Complex Site is bounded along its northern extents by a small brook. Immediately beyond the brook to the north is a woodland belt. This tree belt contains a number of trees which are collectively subject to a single Tree Preservation Order (TPO), a small part of which lies within the Order Limits along the entire northern boundary. This boundary feature and the overgrown hedgerow along the eastern boundary provide some visual containment at ground level.
- 2.2.9 Land to the north of the Power Station Complex is known as Kingmoor Park North; this is allocated in the Wrexham Unitary Development Plan (UDP) for employment uses and has planning permission for B1/B2/B8 development.
- 2.2.10 The key location maps and plans submitted with the application were:
- the Land Plans including Crown Land [APP-007];
  - the Works Plan [APP-008]; and
  - the Access and Rights of Way Plans [APP-009].

### **2.3 THE APPLICATION AT THE CLOSE OF EXAMINATION**

- 2.3.1 Changes to the key application documents, including the wording of the proposed DCO, were submitted and updated during the Examination. The changes seek to address points raised by IPs and my questions; and to reflect improved information and changes arising during the Examination. These included matters such as clarity and/or discrepancies within the DCO and other environmental matters.
- 2.3.2 The Applicant also submitted a range of updated, revised and/or additional information, including:
- the Access and Rights of Way Plans (Revision 2) [REP2-008];
  - the Book of Reference (BoR) (Revision 3) [REP8-007];
  - the Land Plans (Revision 5) [REP9-006];
  - the Environmental Statement (ES) Appendix: Foul and Surface Water Drainage Strategy (Revision 1) [REP4-016];
  - the ES Appendix: Construction Environmental Management Plan (Revision 2) [REP4-018];
  - the ES Addendum: Cumulative Effects Assessment - Electrical Connection Statement [REP2-015];
  - the draft DCO, the most recent version of which is referred to as the Applicant's preferred draft DCO (Revision 7) [REP9-007]; and
  - the Explanatory Memorandum (EM) to the DCO (Revision 2) [REP9-008].

All of this information was accepted into the Examination and is found in the Examination Library.

- 2.3.3 I consider the question of whether these amended documents amount to a change to the application sufficient to require it to be considered as a new application in Chapter 3 (Section 3.12) below.

## **2.4 RELEVANT PLANNING HISTORY**

- 2.4.1 Section 1.2 of WCBC's Local Impact Report (LIR) briefly outlines the planning history associated with the site of the Proposed Development [LIR-001].
- 2.4.2 Outline planning permission for the development of 47,534 square metres of warehouse and distribution including 2,144 square metres of office space in a single building was granted on the Power Station Complex Site on appeal (WCBC ref: APP/H6955/A/09/2113258) in May 2015.
- 2.4.3 The appeal decision recognised the site as the only location on WIE available for large scale development of the type then proposed [APP-049]. A planning application to renew this outline planning permission is pending consideration by WCBC (WCBC ref: P/2013/0270).
- 2.4.4 Paragraph 2.1.6 above records the planning history of the proposed gas connection alignment for the Proposed Development, for which planning permission has been granted.
- 2.4.5 Earthworm Energy Plc Ltd (Earthworm) (An 'other person' equivalent to an AP [REP1-004]), gained planning permission from WCBC pursuant to TCPA1990 on 31 July 2015 (WCBC reference P/2015/0287) for the use of land for the erection of a solar photovoltaic array (the solar farm) with an installed generating capacity of up to 4 MW, including metering and inverter kiosks, security cameras, fencing and gates, a temporary construction of compound and access track on land north west of Pickhill Bridge Farm, Holt Road, Cross Lanes, Wrexham, LL13 0UH [REP1-004]. This land includes land described as Plots GC12, 12A and 12B on the Land Plans [REP9-006]. The red line boundary for the proposed gas connection alignment crosses the consented solar array which is therefore subject to proposals for CA and TP powers in the draft DCO.
- 2.4.6 Earthworm submitted that construction of access works and the foundations for a substation for the solar farm were in place before the end of the Examination. It estimated that the solar farm construction process would be complete by 6 March 2017 [REP7-001]. The Applicant does not dispute this submission [REP8-006 at para 4.1]. At an unaccompanied site inspection (USI) at Pickhill Farm, Cross Lanes on 18 January 2017 [EV-034] I observed construction signage for the solar farm on the site entrance. It is clear that the planning permission granted under reference P/2015/0287 has commenced and it is also likely that there will be a constructed and operational solar farm on

the land on a timescale similar to that for the SoS' decision on this application.

- 2.4.7 Matters relating to the solar farm are addressed in Chapters 4, 7 and 8 below.
- 2.4.8 No previous NSIP applications have been submitted relating to or affecting the site of the Proposed Development.

### **3 LEGAL AND POLICY CONTEXT**

#### **3.1 INTRODUCTION**

- 3.1.1 This chapter sets out the relevant legal and policy context for the application which was taken into account and applied by the Examining Authority in carrying out its examination and in making its findings and recommendations to the Secretary of State (SoS).
- 3.1.2 The Applicant's Planning Statement [APP-041] sets out the policy position in relation to the Proposed Development. The document includes an assessment of the project against the policy requirements of National Policy Statements (NPSs) EN-1, EN-3 and EN-4.
- 3.1.3 The Planning and Legislative Context chapter of the Environmental State (ES) [APP-050] also sets out the policy position, with specific focus on international obligations, the national policy context and the local policy context. Individual chapters of the ES provide specific policy background relating to particular topics. Throughout all these policy levels, three main themes are covered: reducing emissions; renewable energy; and managing the environment.
- 3.1.4 Wrexham County Borough Council's (WCBCs) Local Impact Report (LIR) [LIR-001 and REP2-005] includes the local authority position on applicable development plan policies and other local strategies.

#### **3.2 PLANNING ACT 2008**

- 3.2.1 The application is for an NSIP, namely a combined cycle gas turbine generating station with an electrical output of up to 299 MWe [APP-001]. The components of the Proposed Development are set out in Chapter 2 of this report.
- 3.2.2 This application is a Nationally Significant Infrastructure Project (NSIP) as it includes *"the construction or extension of a generating station"* (s14(1)(a) of the Planning Act 2008 (as amended) (PA2008), with a gross electrical output in excess of 50MW, that meets the provisions set out in s15(2) of PA2008. Section 104 of PA2008 applies:
- "[...]in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates."*
- 3.2.3 Section 104(3) requires the SoS to decide the application in accordance with any relevant national policy statements that have effect in relation to this application, subject to certain exceptions as specified in subsections 104(4) to (8). Details of the specific NPSs that apply to this project are set out below.
- 3.2.4 Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA2008. In summary, the matters set out in s104(2) are any relevant NPS, any LIR, any matters prescribed in relation to the development,

and any other matters the SoS thinks are both important and relevant to the decision.

3.2.5 This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008.

### **3.3 NATIONAL POLICY STATEMENTS**

3.3.1 NPSs set out Government policy on different types of national infrastructure development. I consider that the NPSs relevant to this case are:

- EN-1: Overarching National Policy Statement for Energy;
- EN-2: Fossil Fuel and Electricity Generating Infrastructure; and
- EN-4: Gas supply infrastructure and gas and oil pipelines

3.3.2 These were produced by the Department for Energy and Climate Change (DECC), which is now the Department for Business, Energy and Industrial Strategy (BEIS). The NPSs were designated by the Secretary of State for Energy and Climate Change on 19 July 2011.

3.3.3 These three NPSs form the primary policy context for this examination. This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008. The purpose and broad content of these NPSs is summarised here. However, particular and subject specific consideration of policy arising from them is provided where necessary in the remainder of this report below, particularly in Chapter 4.

#### **EN-1: Overarching National Policy Statement for Energy**

3.3.4 The Overarching National Policy Statement for Energy (EN-1) sets out the Government's policy for delivery of major energy infrastructure projects. EN-1 states that:

*'the UK needs all the types of energy infrastructure covered by the NPS's in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions' (paragraph 3.3.1). It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure' (paragraph 3.1.3)*

3.3.5 EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport, environmental, social and economic benefits and adverse impacts at national, regional and local levels.

3.3.6 The NPS requires account to be taken of:



- the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
- potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

## **EN-2: Fossil Fuel and Electricity Generating Infrastructure**

3.3.7 EN-2 sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which Government requires to be met by them. These include explanations of the Government's approach to subject matters raised by this application, including the selection of gas combustion technology, Combined Heat and Power (CHP), Carbon Capture Readiness (CCR), climate change adaptation and consideration of good design. In terms of the impacts of gas generating stations, EN-2 re-iterates the policy in EN-1 and adds the need to consider impacts of air emissions, landscape and visual, noise and vibration and water quality and resources.

## **EN-4: Gas supply infrastructure and gas and oil pipelines**

3.3.8 NPS EN-4 sets out matters that bear on the consenting of the gas connection alignment for the Proposed Development, rather than the Proposed Development itself. The Proposed Development will require a gas supply and a connection to gas transmission infrastructure [APP-155]. The DCO that has been applied for contains powers that relate to the compulsory acquisition (CA) and temporary possession (TP) of land required for the gas connection alignment (land ancillary to the development) but does not provide development consent for the gas connection alignment. This is because a gas connection alignment is associated development that a DCO applicable in Wales may not provide for.

3.3.9 Whilst I am not examining an application to provide development consent for a gas pipeline, this Examination has had to consider whether the powers in the DCO relating to the CA and TP of land for the development of the gas connection alignment are appropriate. In undertaking its assessment in the ES submitted with the application, the Applicant has taken the view that EN-4 is relevant to these circumstances and has drawn my attention to it. No Interested Parties (IPs) have argued that it was not relevant. Having considered this position, I agree with the Applicant that NPS EN-4 is relevant, but note that its relevance must be confined to the assessment of the effects of CA and TP of land for a gas connection alignment, and the appropriateness of draft DCO provisions applicable to such land. It does not provide the primary decision-making framework for the application before the SoS.

## **EN-5: Electricity networks infrastructure**

- 3.3.10 NPS EN-5 sets out matters that bear on the consenting of electricity network infrastructure, which can include above ground electricity lines that form part of the distribution system, with a nominal voltage expected to be 132kV or above. The Proposed Development requires to be connected to the grid to export electricity. As with the proposed gas connection, the electrical connection is associated development that a DCO applicable in Wales may not provide for.
- 3.3.11 The Proposed Development has a grid connection offer from the distribution network operator (DNO) [APP-155][OD-006-7]. This anticipates a wholly undergrounded connection that would be constructed within the highway using permitted development powers available to the DNO. Such an approach means that the electrical connection alignment does not need to be provided for in the DCO at all as, unlike the gas connection alignment, it has no ancillary land requirement.
- 3.3.12 On this basis, I am satisfied that NPS EN-5 is not applicable to this examination.

## **3.4 WELSH LEGISLATION, POLICY AND GUIDANCE**

3.4.1 Welsh legislation, policy and guidance include:

- Government of Wales Act (2006);
- Planning (Wales) Act (2015);
- Wellbeing of Future Generations (Wales) Act (2015);
- Historic Environment (Wales) Act (2016);
- Environment (Wales) Act (2016);
- Equality Act 2010 (Statutory Duties) Wales Regulations (2011);
- Planning Policy Wales (Edition 9 November 2016);
- Technical Advice Notes;
- Wales Spatial Plan (2008); and
- elements of Welsh Government energy and climate policy documents.

### **Government of Wales Act 2006**

3.4.2 The Government of Wales Act 2006 enables the Welsh Government to make legislation which then applies in Wales. The legislation must be within the legislative competence of the Welsh Government, ie relate to the devolved matters which are set out as a series of broad headings, or 'subjects', which include:

- environment: matters such as environmental protection, countryside, open spaces, nature conservation, habitats, coast and marine environment;
- local government, including areas of local authorities which includes their boundaries of jurisdiction for matters such as development control and enforcement; and
- town and country planning.

- 3.4.3 Some matters which would otherwise be encompassed by these broad headings are "...not devolved including development consent application under PA2008 (Government of Wales Act, Schedule 7, paragraph 18)."

#### **Planning (Wales) Act 2015**

- 3.4.4 The Planning (Wales) Act is not directly relevant to this examination and does not bind the ExA or the SoS. However, as it bears on the operations of actors within the planning system in Wales (including local planning authorities), I have taken its content into account.

#### **Wellbeing of Future Generations (Wales) Act 2015**

- 3.4.5 The Wellbeing of Future Generations (Wales) Act is not directly relevant to this examination and does not bind the ExA or the SoS. However, it places sustainability and wellbeing duties on the operations of actors within the planning system in Wales (including Natural Resources Wales (NRW) and local planning authorities) and I have taken its content into account.

#### **Historic Environment (Wales) Act 2016**

- 3.4.6 The Historic Environment (Wales) Act is not directly relevant to this examination and does not bind the ExA or the SoS. However, it places duties on the operations of actors within the planning system in Wales (including Cadw, local planning authorities and applicants) and I have taken its content into account.

#### **Environment (Wales) Act 2016**

- 3.4.7 The Environment (Wales) Act is not directly relevant to this examination and does not bind the ExA or the SoS. However, it places duties on the operations of actors within the planning system in Wales (including NRW and local planning authorities), which include a duty to and I have taken its content into account.

#### **Equality Act 2010 (Statutory Duties) Wales Regulations 2011**

- 3.4.8 Section 153 of the Equality Act 2010 enables the Welsh Ministers to impose duties on certain Welsh public authorities through regulations.

- 3.4.9 The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, enables the better performance of duties under s149(1) of the Equality Act 2010 in Wales, which are to have due regard to the need:

- to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act;
- to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **Planning Policy Wales**

- 3.4.10 Land use planning policies for Wales are set out in the Welsh Government's document Planning Policy Wales (PPW). PPW is supported by a series of Technical Advice Notes (TANs) listed below.
- 3.4.11 When the application was prepared and submitted, the latest version of PPW was Edition 8 (January 2016), and assessments set out within the application documents refer to this. In November 2016, PPW Edition 9 was published. I provided the Applicant and IPs with an opportunity to draw my attention to any matters in respect of which the publication of Edition 9 required a change to the assessment of the application at Examination Deadline 7 (DL7) and DL8. All such submissions have been taken into account and PPW Edition 9 has been referred to as necessary in this report.
- 3.4.12 The primary policy changes of relevance to the Application are as follows:
- Chapter 6 of PPW (the historic environment) has been fully revised following Royal assent to the Historic Environment (Wales) Act (2016). However, I am satisfied that the assessment approach in the ES remains consistent with the new policy approach in PPW Edition 9. Further, I have consulted Cadw in a manner consistent with the approach outlined in PPW Edition 9.
  - Chapters 1 (Introduction), 4 (Sustainability) and 8 (Transport) has been revised to trigger appropriate reference to the National Indicators published by the Welsh Government under the Wellbeing of Future Generations (Wales) Act (2015) as well as to that legislation and to the Environment (Wales) Act (2016). I note that national indicator 4 'Levels of nitrogen dioxide (NO<sub>2</sub>) pollution in the air' is prospectively relevant to the Application but consider that the ES provides the information necessary to enable that indicator to be applied.

However, neither the Applicant [REP7-009] nor any IPs sought changes to the application to address the change from PPW Edition 8 to Edition 9.

- 3.4.13 PPW does not contain specific policies for nationally significant infrastructure projects. The framework for this is set out in the NPSs which also apply in Wales. However, PPW and the TANs may be both important and relevant in the determination of this application.
- 3.4.14 PPW sets out the land use planning policies of the Welsh Government and indicates that the Welsh Government is committed to playing its part in meeting the UK's required target of 15% of energy being from renewables by 2020 (paragraph 12.8.1). It seeks to deliver an energy programme which contributes to reducing carbon emissions as part of the approach to tackling climate change whilst enhancing the well-being of the people and communities of Wales, as outlined in Energy Wales: A Low Carbon Transition (see below).

3.4.15 The SoS is not statutorily required to decide the application in accordance with PPW or other Welsh Government policy. However, policies on subject matters raised by an application in Wales are clearly capable of being important and relevant considerations in the determination of an NSIP application and it is on this basis that I have considered PPW policy.

#### **Technical Advice Notes**

3.4.16 The TANS produced by the Welsh Government provide further guidance on specific planning topics. The content of the following TANS are capable of being important and relevant in the consideration of this application and have been considered:

- TAN 5: Nature Conservation and Planning (2009);
- TAN 6: Planning for Sustainable Rural Communities (2010);
- TAN 11: Noise (1997);
- TAN 12: Design (2014);
- TAN 15: Development and Flood Risk (2004);
- TAN 18: Transport (2007);
- TAN 20: Planning and the Welsh Language (2013);
- TAN 21: Waste (2014); and
- TAN 23: Economic Development (2014)

#### **Wales Spatial Plan**

3.4.17 The Wales Spatial Plan 2008 (WSP) sets out cross-cutting national spatial priorities and provides the context and direction of travel for local development plans. It identifies six sub-regions in Wales without defining hard boundaries, reflecting the different linkages involved in daily activities. The plan places Wrexham into the North East Wales - Border and Coast region (Chapter 16). It identifies Wrexham as a key settlement of national importance, a key regeneration area and a key business sector area. I have considered relevant content from the WSP 2008.

#### **Welsh Government Energy and Climate Policies**

3.4.18 I have considered Welsh Government energy policies including Energy Wales: A Low Carbon Transition (2012) and The Climate Change Strategy for Wales (2010). Whilst these documents are relevant in subject matter terms, because the application falls to be considered under relevant NPSs that cover much of the same subject matter, I have only had regard to these as setting context.

### **3.5 EUROPEAN DIRECTIVES AND RELATED UK LEGISLATION**

#### **Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive)**

3.5.1 The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and taken into

account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive.

- 3.5.2 The proposed development falls to be considered under the UK legislation related to 2011/92/EU: the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) as discussed further below. The most recent EIA Directive is 2014/52/EU, which entered into force on 15 May 2014. The 2014 Directive is not yet transposed into domestic UK law and is not applicable to the proposed development.

**Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations)**

- 3.5.3 The EIA Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that an ExA can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision-maker in making a decision on EIA Development. Regulation 3(2) of the EIA Regulations states:

*"...the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so."*

- 3.5.4 The proposed development is EIA development under Schedule 2 of the EIA Regulations. The Applicant has provided an ES [APP-047 to APP-152] as part of the submitted application.
- 3.5.5 In reaching my conclusions and recommendation I have taken the environmental information as defined in Regulation 3(2) (including the ES and all other information on the environmental effects of the development) (see Chapters 4 to 6 of this report) into consideration.

**Council Directive 2008/50/EC  
on ambient air quality and cleaner air for Europe (the Air Quality Directive)**

- 3.5.6 The Air Quality Directive (AQD) came into force on 11 June 2008. The Directive consolidates four directives and one Council decision into a single directive on air quality. Under the AQD Member States are required to assess ambient air quality with respect to sulphur dioxide, nitrogen dioxide and nitrogen monoxide, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. The Directive set limiting values for compliance and establishes control actions where these are exceeded. It is transposed into UK statute through regulations made under the Environment Act 1995 (EA1995).

- 3.5.7 Part IV of EA1995 requires all local authorities in the UK to review and assess air quality in their area. If any standards are being exceeded or are unlikely to be met by the required date, then that area should be designated an Air Quality Management Area and the local authority must draw up and implement an Air Quality Action Plan aimed at reducing levels of the pollutant.
- 3.5.8 The relevance of this Directive to this application is set out directly in Chapter 4 of this report.

**Council Directive 92/43/EEC  
on the conservation of natural habitats and of wild fauna and  
flora (the Habitats Directive)**

- 3.5.9 The Habitats Directive (together with Council Directive 2009/147/EC on the conservation of wild birds ('the Birds Directive')) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1,000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.) which are of European importance. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.5.10 The Habitats and Birds Directives are transposed into UK law through the Conservation of Habitats and Species Regulations 2010 (as amended) in respect of the terrestrial environment and territorial waters out to 12nm; and through the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended) for UK offshore waters.
- 3.5.11 The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

**Council Directive 2009/147/EC  
on the conservation of wild birds (the Wild Birds Directive)**

- 3.5.12 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union (EU). The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.5.13 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level

which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

- 3.5.14 The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

**The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations')**

- 3.5.15 The Habitats Regulations provide domestic force to the Habitats Directive and the Wild Birds Directive and provide the cornerstone on which the practice of Habitats Regulations Assessment (HRA) is undertaken in England and Wales. Their relevance to this application is set out directly in Chapter 5 (HRA) of this report, but they are considered elsewhere as required.

**Council Directive 2000/60/EC (as amended)  
A framework for Community action in the field of water policy  
(the Water Framework Directive)**

- 3.5.16 The Water Framework Directive (WFD) establishes a framework for water policy, managing the quality of receiving waters. The directive is concerned with water management. Amongst other objectives, it requires EU Member States to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration.
- 3.5.17 In implementing the directive, NPS EN-1 states at paragraph 5.15.3 that an ES should describe:

*"[e]xisting physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive."*

- 3.5.18 Consideration of water quality and management is contained in Chapter 4 of this report.

**3.6 OTHER LEGAL AND POLICY PROVISIONS**

**United Nations Environment Programme (UNEP)  
Convention on Biological Diversity 1992**

- 3.6.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular, I find that compliance with UK provisions on environmental impact assessment and transboundary matters with



regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of the Convention.

- 3.6.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.6.3 This is of relevance to biodiversity, biological environment, ecology, HRA and EIA matters, which are considered in Chapters 4 and 5 of this report.

#### **National Parks and Access to the Countryside Act 1949 (as amended)**

- 3.6.4 The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare National Nature Reserves (NNRs) and for local authorities to establish Local Nature Reserves (LNRs).
- 3.6.5 National Parks and AONBs have statutory protection in order to conserve and enhance their natural beauty including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.
- 3.6.6 It has been considered in Chapter 4 of this report.

#### **The Wildlife and Countryside Act 1981 (as amended)**

- 3.6.7 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for Wales is Natural Resources Wales (NRW). The SNCB for England is Natural England (NE).
- 3.6.8 The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and Public Rights of Way (PRoWs).
- If a species protected under the Act is likely to be affected by development, a protected species licence will be required from NRW.
  - Sites protected under the Act (including SSSIs) must also be considered.
  - The effects of development on the PRoW network is also relevant.
- 3.6.9 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.

3.6.10 I discuss all of these matters in Chapters 4 and 5 of this report.

**Countryside and Rights of Way Act 2000  
(the CRoW Act)**

3.6.11 The CRoW Act brought in measures to further protect AONBs and improved provisions for the protection and management of SSSIs.

3.6.12 In the present case, this is relevant to the examination of effects and mitigation in relation to the consideration of possible impacts on the Clwydian Range and Dee Valley AONB and on SSSIs. These matters are considered in Chapter 4 of this report.

**Natural Environment and Rural Communities Act 2006  
(the NERC Act)**

3.6.13 The NERC Act makes provision for bodies concerned with the natural environment and rural communities in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions to the purpose of biodiversity. In complying with this, regard must be given to the UNEP Convention on Biological Diversity of 1992.

3.6.14 This is of relevance to biodiversity, biological environment and ecology and landscape matters arising from the Proposed Development and reported in Chapters 4 and 5 of this report.

**3.7 MADE DEVELOPMENT CONSENT ORDERS**

3.7.1 Consideration has been given to the made Meaford Gas Fired Generating Station Order (SI2016/779) (the Meaford Order). This Order provides for a combined cycle gas turbine generating station where the Applicant is also a special purpose joint venture between Glenfinnan and St. Modwen, as in the current application. The Applicant's approach to the drafting of the DCO in this application has been closely informed by the drafting approach taken in the Meaford Order. I have taken the view that in circumstances where there is no necessity to amend provisions to address legislative and policy requirements, matters arising from representations and local circumstances, the drafting approach taken in the Meaford Order should correctly form the starting point for my recommended draft DCO.

3.7.2 Consideration has been given to the following made Orders in Wales:

- Port Talbot Steelworks Generating Station Order (SI 2015/1984);
- Hirwaun Generating Station Order (SI 2015/1574) (as amended);
- Swansea Bay Tidal Generating Station Order (SI 2015/1386) (as amended);
- South Hook Combined Heat and Power Plant Order (SI 2014/2846);
- Clocaenog Forest Wind Farm Order (SI 2014/2441); and

- Brechfa Forest West Wind Farm Order (SI 2013/586) (as amended),

primarily to provide a context within which to consider the approach to be taken to the type of development that can be described as integral and associated development in Wales, and to the proper relationship between associated development and compulsory acquisition (CA) and temporary possession (TP) powers in a Welsh DCO.

### **3.8 TRANSBOUNDARY EFFECTS**

3.8.1 The SoS has carried out the following Transboundary Screenings:

- First screening – 15 January 2013 following the Applicant’s request for a scoping opinion;
- Second screening – 24 July 2014 following submission of a second request for a scoping opinion; and
- Third screening – 1 August 2016 following submission of the DCO application.

3.8.2 Following the Applicant’s submission of their DCO application, the SoS reconsidered the transboundary screening decision undertaken on 22 August 2014.

3.8.3 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) and on the basis of the information available from the Applicant, the SoS decided on 5 October 2016 that the proposed development is not likely to have significant effects on the environment in another European Economic Area (EEA) State.

3.8.4 In reaching this view the SoS has applied the precautionary approach explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation. Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.

### **3.9 OTHER RELEVANT POLICY STATEMENTS**

3.9.1 I have taken other relevant Government policy into account, including:

- The Energy White Paper: Meeting the Challenge (May 2007);
- UK Low Carbon Transition Plan (2009);
- National Strategy for Climate and Energy (July 2009);
- UK Renewable Energy Strategy (July 2009); and
- The National Infrastructure Plan (as updated from 2010 to 2016);

### **3.10 LOCAL IMPACT REPORT (LIR)**

3.10.1 Section 104(2) of PA2008 states that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3).

- 3.10.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 24 June 2016 [PD-006]
- 3.10.3 A draft LIR was submitted by WCBC on 10 June 2016 [LIR-001]. On 21 September 2016 the council confirmed that this LIR now formed the final version with no changes [REP2-005].
- 3.10.4 The LIR is structured in that it gives consideration to the various chapters of the Applicant's ES in relation to the council's policies. For example issues such as transport, noise, air quality, ecology, landscape and visual impact are considered.
- 3.10.5 The LIR is considered in all Chapters from 4 - 9 of this report.

### **3.11 THE DEVELOPMENT PLAN AND LOCAL POLICY BACKGROUND**

3.11.1 As outlined in the Applicant's Planning Statement [APP-041] and the LIR submitted by WCBC [LIR-001], the following statutory and non-statutory local planning policy documents are relevant to the consideration of this application:

- Wrexham Unitary Development Plan 1996-2011 (LDP1); and
- Wrexham Local Development Plan 2 2013 to 2028 (LDP2).

It should be noted that Wrexham Local Development Plan 1 did not complete examination and has been withdrawn and so has not been considered.

- 3.11.2 I have considered whether the Proposed Development gives rise to important and relevant impacts arising in neighbouring local government areas in Wales or England. However, having taken into account the absence of LIRs from any neighbouring authorities and my own inspections of the setting of the application site, I have concluded that it is not necessary to consider policies from any neighbouring authority development plans.
- 3.11.3 Issues of conformity with development plan policies are covered in Chapter 4 of this report.
- 3.11.4 As stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the above documents and a NPS then the NPS takes precedence because of the national significance of the infrastructure.

### **3.12 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

3.12.1 I have remained aware throughout the Examination of the need to consider whether changes to the application have changed it to a point where it became a different application and whether the SoS would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.

- 3.12.2 'Planning Act 2008: Guidance for the examination of applications for development consent' (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance<sup>3</sup>. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.
- 3.12.3 Having considered this context throughout the Examination, I am content that the changes to the application, primarily consisting of technical revisions to the DCO as applied for, have not resulted in any significant change to that which was applied for. I am therefore of the view that the SoS has the power to make the DCO as recommended in Chapter 8 and provided in Appendix D to this report.

---

<sup>3</sup> <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES**

### **4.1 INTRODUCTION**

This chapter commences by outline the sources of information I have used to consider the policy and factual issues raised by the Proposed Development, within the framework provided by PA2008. It continues to set out a framework within which individual issues for examination have arisen. It explains how that framework has evolved during the Examination. It then applies that framework to analyse and reach conclusions on individual issues. The individual conclusions feed forward into the balanced conclusion on the case for development, set out in Chapter 6.

### **4.2 SOURCES OF INFORMATION AND RESPONSES TO THEM**

#### **Written and oral submissions**

- 4.2.1 Forty relevant representations (RRs) were made [RR0-001 to 40] and have been considered. RRs were made by the Welsh Government, statutory authorities, utility providers, Wrexham County Borough Council (WCBC) and community councils, local residents and businesses located on Wrexham Industrial Estate (WIE).
- 4.2.2 Participants in the Examination have been provided with the opportunity to make Written Representations (WRs) at Examination Deadline 1 (DL1), to comment on them at DL and to respond in writing to my questions and to matters arising at hearings, over nine deadlines (DL1 - DL9). 165 such documents were submitted.
- 4.2.3 Statements of Common Ground (SoCGs) have been provided and are taken into account as follows:
- Between the Applicant and Cadw [REP2-016];
  - Between the Applicant and NRW [REP6-008]; and
  - Between the Applicant and WCBC [REP7-018].
- 4.2.4 Oral submissions were also made at hearings as documented in Chapter 1 of this report above and have been taken into account.
- 4.2.5 The matters raised in RRs, WRs and responses to my questions, in SoCGs and to matters arising at hearings have been responded to in my framework of issues set out in Section 4.3 below and are taken into account in the remainder of this report to the extent that they are important and relevant<sup>4</sup>.

---

<sup>4</sup> PA2008 s104(2)d

## **The Local Impact Report (LIR)**

- 4.2.6 One Local Impact Report (LIR) was submitted by WCBC [LIR-001], before the commencement of the Examination and with some material at section 2.2 on transport apparently missing. I was conscious WCBC may wish to review its LIR within the Examination period taking account of matters drawn to its attention (for example as raised in RRs) and so made provision in the Examination timetable [PD-008] pursuant to PA2008 s60 for that to occur by DL1. WCBC confirmed that a revised LIR would not be provided [REP2-005] and so on that basis I have considered the original LIR [LIR-001]. The content of the LIR is a matter specifically required to be considered by the SoS in make a decision on this application<sup>5</sup>.
- 4.2.7 The LIR provided information on the following matters:
- the development plan;
  - national planning policy;
  - planning history;
  - transport;
  - heritage;
  - the water environment;
  - air quality;
  - noise and vibration;
  - ecology;
  - landscape and visual impact assessment;
  - trees; and
  - land to the north of the application site.
- 4.2.8 No important and relevant issues were raised in the LIR that gave rise to in-principle breaches of relevant NPS policy or to objections to the Proposed Development. Advice was provided on the matters to be addressed in requirements and this is taken fully into account in the remainder of this report.
- 4.2.9 As recorded in Chapter 3 above, the LIR identified that the development plan in force is the Wrexham Unitary Development Plan 1996 - 2011, adopted on 14 February 2005 (the UDP). WCBC identified the application of UDP policy E3 as relevant to the application site and proposal in the LIR [LIR-001]. The LIR did not draw specific attention to any other UDP policies as being relevant, other than as set out in Chapter 2 of the ES [APP-050].
- 4.2.10 The LIR identified that the submitted draft Wrexham Local Development Plan 2006 - 2021 (LDP1) was withdrawn in 2012, following the suspension of the Examination process. As yet, the draft Wrexham Local Development Plan 2013 - 2028 (LDP2) has not been submitted to the Welsh Government for examination. The LIR advises that WIE forms the focus for employment development in the draft

---

<sup>5</sup> PA2008 s104(2)b

LDP2. It does not draw specific attention to any LDP2 policies as being relevant however, and also suggests that limited material weight can be afforded to LDP2 until it is adopted.

- 4.2.11 I refer to the development plan documents taken together as the local policy framework. This chapter addresses conformity with development plan policies within the local policy framework provided by the ES as referred to in the LIR. That being noted, the local policy framework is not the primary policy framework applicable to the decision on this application, which falls to be determined in terms of compliance with NPS policy, subject to consideration of the local policy framework. The LIR did not identify any in-principle instances of harm or breach relevant to the local policy framework. Nor did other examination participants specifically urge on me consideration of harm to or breaches of the local policy framework. For these reasons, whilst full consideration has been provided to the material referred to me, I have not provided detailed analysis against the local policy framework in the remainder of this chapter, unless there is a prospective issue of compliance that requires to be analysed in order for a decision on this application to be made.

### **The legislative and policy framework**

- 4.2.12 The legislative and policy framework applicable within this Chapter is summarised at a high level in Chapter 3 above. Individual references to relevant policy detail are also drawn out in the individual subject matter sections of this Chapter below.
- 4.2.13 The primary sources of policy are NPS EN-1, EN-2 and EN-4 (in respect of a land requirement for the gas connection alignment only) and all relevant elements of these have been considered<sup>6</sup>. It should be recalled that as the proposed electricity connection alignment is to be constructed using permitted development powers, underground and by the DNO, it is not provided for in the application and so NPS EN-5 is not relevant.
- 4.2.14 I have undertaken my reasoning on the Proposed Development and hence frame my recommendation on planning merits, noting that the SOS *'must decide the application in accordance with any relevant national policy statement'*<sup>7</sup> except to the extent that a legislated exception applies<sup>8</sup>. Whilst individual policy references are addressed below, in general terms I observe that none of the legislated exceptions to the application of relevant NPS policy was found to apply. It follows therefore that the application is recommended to be decided wholly within the framework of relevant NPS policy.

---

<sup>6</sup> PA2008 s104(2)a

<sup>7</sup> PA2008 s104(3)

<sup>8</sup> PA2008 s104(4) to (8)



4.2.15 The requirements of legislation other than PA2008 are identified and applied as required. Policy other than policy arising from the NPS is capable of being important and relevant<sup>9</sup> and has been identified as applicable and is analysed below as required. However, again it should be highlighted that no analysis of policy arising from outside the relevant NPSs has given rise to considerations that bear against the application of NPS policy as allowable under PA2008<sup>10</sup>.

### **Environmental Impact Assessment (EIA) considerations**

4.2.16 The Proposed Development is Environmental Impact Assessment (EIA) development<sup>11</sup>. An Environmental Statement (ES) formed part of the application [APP-047 - 152].

4.2.17 I have had full regard to the content of the ES and to the policy requirements relevant to the adequacy of an ES set out in NPS EN-1 at section 4.2.

4.2.18 Individual concerns about the adequacy of the ES in terms of the accurate identification of specific effects or the provision of appropriate mitigation for those effects were raised by local residents and community representatives objecting to the Proposed Development and these are addressed individually as they arise in the remainder of this Chapter. However, it is fair to set out as a general observation, that taking all such material into account, I find that the ES provided an adequate framework of evidence and analysis within which to appreciate the likely significant effects of the Proposed Development. I agree that it has identified the range of such effects and has proposed appropriate mitigations for them.

4.2.19 The Proposed Development is not described in the ES in fixed and final detail. As is normal in applications of this scale and nature, options for the detailed delivery of particular aspects of it are reviewed and the subsequent testing in the ES is then based on a worst or most likely adverse scenario in terms of environmental impacts. In this respect, I am also broadly satisfied that (as per NPS EN-1 paragraph 4.2.8<sup>12</sup>) the submitted ES has described a worst case project - the 'Rochdale Envelope' for the Proposed Development - in sufficiently certain terms.

4.2.20 NPS EN-1 paragraph 4.4 draws attention to the need for information about the main alternatives to the Proposed Development that have

---

<sup>9</sup> PA2008 s104(2)d

<sup>10</sup> PA2008 s104(4) to (8)

<sup>11</sup> Subject to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended and hence to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263)

<sup>12</sup> Case law derived from the decision in Rochdale MBC Ex. Parte C Tew (1999) provides a legal principle that whilst indicative sketches and layouts cannot provide the basis for determining applications for EIA development, the "Rochdale Envelope" is a series of maximum extents of a project for which the significant effects are established. The detailed design of the project can then vary within this 'envelope' without rendering the ES inadequate.

been studied in the ES. I am generally satisfied that sufficient study of alternatives has been set out, but matters bearing on concerns about possible alternative sites for the Proposed Development were raised in RRs and are addressed in more detail from section 4.4 below.

### **Habitats Regulations Assessment (HRA) considerations**

4.2.21 The Proposed Development is one that that has been identified as giving rise to the potential for likely significant effects on European Sites and hence is subject to Habitats Regulations Assessment (HRA)<sup>13</sup>. As is conventional in reports for decision prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 5 of this report below. However, at this point in this chapter it is necessary to record that I have considered all documentation relevant to HRA as required by Section 4.3 of NPS EN-1, and I have taken it into account in the conclusions reached here and in the Planning Balance (Chapter 6 below). Further, project design and mitigation proposals included in the ES and secured in the DCO have been fully considered for HRA purposes.

## **4.3 MAIN ISSUES IN THE EXAMINATION**

4.3.1 I made an initial assessment of principal issues (IAPI)<sup>14</sup> in preparation for the preliminary meeting (PM). The IAPI was published as Annex B to the Rule 6 Letter on 24 June 2016 [PD-006].

4.3.2 The IAPI identified the issues raised by the application and the written submissions available at that time as follows:

- air quality and emissions;
- biodiversity, ecology and natural environment;
- combined heat and power (CHP) readiness;
- debris and waste;
- gas and electricity connections;
- historic environment;
- landscape and visual impacts;
- noise and vibration;
- option development;
- other strategic projects and proposals;
- risk and hazard management;
- socio-economic effects;
- statutory undertakers;
- transportation and traffic; and
- water environment.

4.3.3 The list of issues in the IAPI was set out (as is conventional) in alphabetic order, with no implications as to relative significance.

---

<sup>13</sup> Sites identified for conservation pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Council Directive 2009/147/EC on the conservation of wild birds and hence subject to the Conservation of Habitats and Species Regulations (SI 2010/490) (as amended)

<sup>14</sup> PA2008 s88(1)

4.3.4 The IAPI list of issues was not immutable. Views were sought at the PM as to its content but none arose directly there [PD-007]. As the Examination progressed, inevitable differences in the relative significance of issues emerged, as did groupings of issues around common themes. Taking these into account, I have grouped the and slightly expanded the issues arising from the IAPI into the following framework which is used for reporting in the remainder of this chapter.

### **Land and land use considerations**

4.3.5 Matters relating to a common theme of land requirements for the Proposed Development and related land use considerations gave rise to strongly felt concerns in the local resident community. In recognition of this, the following topics from the IAPI:

- option development;
- gas and electricity connections; and
- other strategic projects and proposals;

have been expanded and grouped together as follows:

- option development;
- the siting of and primary land requirement for the Proposed Development;
- gas and electricity connections and the ancillary land requirement; and
- other strategic projects and proposals.

4.3.6 These are addressed first in this chapter because they were the matters that in large part underscored the objections raised by the considerable number of local resident IPs who participated fully in the Examination. They were the matters of most local concern.

### **Environmental effects**

4.3.7 The other matters identified in the IAPI remained relevant as individual topics for analysis and reporting. However, they have been regrouped in an order which represents the inter-relationships between subject matters, to avoid the need for reiterative references to source material that is relevant to multiple topics. They are grouped as follows:

- landscape and visual impact;
- historic environment;
- biodiversity, ecology and natural environment;
- air quality and emissions, debris and waste;
- combined heat and power (CHP) readiness;
- water environment;
- risk and hazard management;
- noise and vibration;
- transportation and traffic;
- socio-economic effects; and
- other considerations.

4.3.8 Whilst these matters remain relevant, generally they are able to be addressed on a technical basis and in summary terms. The main considerations arising from them relate to the adequacy and security of mitigation and hence to the drafting of the DCO.

### **Over-arching matters and issues**

4.3.9 Taking all of the information from representations and other sources together, I consider that it is important to distinguish between the approach of the following categories of participant in the Examination:

- Public authorities, government departments, agencies and related bodies and the local planning authority (WCBC), which did not object to the principle of the proposed use and development. These bodies sought to ensure that appropriate processes (eg to inform EIA and HRA and to underpin and secure mitigation through the DCO) were put in place.
- Utility and technical service providers (including statutory undertakers), whose interests were impacted to a greater or lesser extent by the Proposed Development. These bodies sought to protect their positions (in respect of matters including the making of connections to services, compulsory acquisition and temporary possession of land, and through protective provisions). They either did not object to the principle of development or their objections were provisional, pending the resolution of appropriate positions in agreements and protective provisions with the Applicant.
- Landowners on land proposed to be affected by compulsory acquisition and or temporary possession. These objected to the Proposed Development, sought to safeguard their positions or did not object on an individualised basis.
- Local residents, a local elected member of WCBC and community councils, who objected to the principle of the proposed use and development on a broad range of grounds. However, they also sought to secure appropriate mitigation, should the development proceed.
- A neighbouring industrial facility - Kellogg Company of Great Britain (Kelloggs), sought to safeguard its food manufacturing plant and the performance of its water treatment facility.
- A solar farm undertaking - Earthworm Energy Ltd (Earthworm), sought to clarify the need for and terms under which the proposed gas connection alignment might pass through its consented but (at that time) unconstructed array. It should be noted that by the closure of the Examination, the development of this solar array had commenced.

4.3.10 It will be seen from this summary that most public body and technical service provider representations sought to engage with the means by which the Proposed Development would be delivered and the necessary mitigation or protection of their interests would be secured. They did not raise matters that are in principle breaches of NPS policies or provide reasons for the refusal of the application.

- 4.3.11 Reference must be made to the starting position of the economic development team of WCBC (the local authority) [RR-40]. This relevant representation provided a clear statement in support of the Proposed Development, highlighting employment, local energy supply security and economic development benefits. However, a follow-up communication was provided by WCBC on 15 July 2016 [OD-009] which in turn flagged that the RR was not a formally adopted position or made under delegated powers and represented an officer team view only<sup>15</sup>. On that basis, I have accorded the RR the weight appropriate to a representation of an individual, as distinct from the official view of the local authority acting corporately and with the imprimatur of the official decision-making apparatus. I have taken the position of WCBC to be the one apparent from the LIR and its remaining contributions to the Examination, both written and oral. In summary terms these can be framed as neutral but technically facilitative: providing advice and guidance on the local policy framework, planning history, mitigation, the means by which it might be secured and the drafting of the DCO.
- 4.3.12 Local residents and one landowner objected strongly to the Proposed Development and sought overall to suggest that development consent should not be granted, for a broad range of reasons.
- 4.3.13 Matters relating to local industry (Kelloggs) and the solar farm (Earthworm) are particular to their facts and are reported on individually below.

#### **4.4 INTRODUCTION TO LAND AND LAND USE CONSIDERATIONS**

- 4.4.1 The following sections of this Chapter address the following issues all relevant to the land requirement for the Proposed Development and to land use considerations. They are dealt with first in recognition of the extent of concerns raised on these topics by local residents objecting to the Proposed Development and of their inter-related nature.
- Option development;
  - The siting of and primary land requirement for the Proposed Development;
  - Gas and electricity connections; and
  - Other strategic projects and proposals.

---

<sup>15</sup> The follow-up communication [OD-009] was received before the PM. As pre-examination correspondence, it was initially considered on an administrative basis only. It was used to adjust the published title of the RR from the Economic Development Section of WCBC [RR-040] to reflect that the RR was a representation from the economic development team and not from the local authority in any formal or official sense. However, during the reporting process, I requested that [OD-009] should be published as an examination document, on the basis that it was necessary to explain the weight that I proposed to accord to [RR-040]. I considered whether there was any need to notify examination participants of this decision but concluded on balance that there was not, as the follow-up communication only affected the interests of WCBC, that WCBC was aware of the matter raised therein, that WCBC had had the duration of the Examination stage to update or amend its position in a WR, but did not do so.

## 4.5 OPTION DEVELOPMENT

### Issues

4.5.1 A considerable number of local resident IPs took the view that the Proposed Development used the wrong technology (gas, a fossil fuel with carbon emissions implications) and hence that the Applicant's appraisal of technology and siting options was flawed. If a fossil fuel plant were to be developed, some felt that it should be subject to carbon capture and storage (CCS) or be ready for that technology (CCR). Others felt such a proposal should be located elsewhere, ideally on the site of another former power station. If a local gas fired generating station was necessary, some considered that it should be located elsewhere, on the Wrexham Industrial Estate (WIE) or on a site at or adjacent to the existing Maelor Gasworks, obviating or reducing the need for the compulsory acquisition of a gas connection alignment.

4.5.2 On need:

- Mr Stephen Whitby [RR-036], Mr Charles Bellis [RR-004], Ms Elizabeth Cross [RR-009], Ms Susan Harber [RR-037], LC Johnson [RR-021], Mr Clive Roberts [RR-006], Ms Joanna Roberts [RR-013], Mr Jonathan Young [RR-017], Sesswick Community Council [RR-034], Mr Chris Briggs [RR-005], Ms Marian Hughes [RR-022], Cllr Michael Morris [RR-025], Mr John Graville [RR-015] and Ms Barbara Pilson [RR-002] were concerned about the need for additional electricity generation capacity locally, in North Wales and in Wales generally.
- Ms Susan Harber [RR-037] considered that the distribution network operator (DNO) had no requirement for additional generating capacity.

4.5.3 On option development:

- Sesswick Community Council [RR-034] preferred that the sites of decommissioned power stations elsewhere should be considered instead. Mr Jonathan Young [RR-017] identified former coal-fired power station sites at Fiddler's Ferry, Rugeley, Stanlow and Ince as examples of possible sites.
- Ms Susan Harber [RR-037] and Mr Grant Scott [RR-011] also argued that more suitable locations existed elsewhere.
- Mr Stephen Whitby [RR-036], Mr John Smith and Ms Susan Davies [RR-014] and Mr John Graville [RR-015] felt that there were more suitable sites for a power station elsewhere on the WIE that were preferable to the application site.
- Mr Andrew Imrie [RR-001] suggested Maelor Gas Works as an alternative site, an approach suggested also by Ms Kathleen Briggs [RR-019], Ms Marian Hughes [RR-022] and Ms Barbara Pilson [RR-002].
- LC Johnson [RR-021] favoured what he considered to be an alternative brownfield location.

## Policy considerations

- 4.5.4 Section 3 of NPS EN-1 explains the need for new energy generation capacity in the UK. As a matter of policy there is an urgent need for additional generating capacity of a wide range of types. Section 3.6 explains that some of this additional capacity will continue to be fossil fuel capacity, as whilst there is a general policy direction in favour of decarbonisation, fossil fuel plants still play a critical part in providing both on demand (peaking) plant to plug peaks in electricity demand, and to provide backup for some intermittent renewables capacity such as wind farms. Older and higher carbon emitting plant (such as coal fire power stations) can also be replaced with newer, more efficient and lower carbon emitting plant (such as combined cycle gas turbines), contributing to a downwards carbon emissions trajectory overall.
- 4.5.5 NPS EN-1 paragraph 3.6.2 emphasises that '*[g]as will continue to play an important role in the electricity sector – providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply*'.
- 4.5.6 NPS EN-1 paragraph 3.6.6 makes clear that larger plant is required to be carbon capture ready (CCR). However, recognising the large scale and cost of potential carbon capture and storage (CCS) technology, a threshold of 300MW installed capacity has been chosen beneath which the CCR requirement does not apply. At 299MW, the Proposed Development is beneath the necessary threshold.
- 4.5.7 Paragraph 4.4.1 of EN-1 requires applicants to include in their ES information about the main alternatives they have studied. They are not required to examine proposals dismissed due to unviability or lack of technical feasibility. However, they should frame the main reasons for their choice of technology and site, taking into account the environmental, social and economic effects and including technical and commercial feasibility considerations, where relevant. In addition, the SoS' Scoping Opinion for the ES of May 2014 confirmed the need to set out the main alternatives studied by the Applicant and reasons for the Applicant's choices.
- 4.5.8 Within this high level framework, NPS Policy EN-2 section 2.2 discusses the factors influencing site selection by developers. This makes clear that site selection is a matter for applicants, taking account of the wider range of subject-specific policy directions provided in the remainder of NPS EN-1 (particularly section 4.1) and EN-2. Whilst not recorded in detail here, I have therefore turned to all relevant elements of NPS policy in considering more broadly whether the application site is an appropriate site for the Proposed Development. Reference was made by the Applicant specifically to Paragraph 5.3.7 (avoiding harm to biodiversity) and 5.7.9 (avoiding land subject to a raised risk of flooding). Relevant here too are the land use characteristics of the application site and its surroundings, and policy directions set or proposed for these in the development

plan, matters which are addressed in more detail in the following section 4.5.

- 4.5.9 PA2008 s10(3)b requires the SoS to have regard to the desirability of achieving good design when considering whether the correct siting and design decisions have been taken about energy infrastructure development. EN-2 paragraph 2.3.15 highlights the need to consider the principles established in NPS EN-1 section 4.5 in this regard. This matter is also the subject of further consideration in individual subject specific sections of this report from 4.8 (landscape and visual impact) below.

#### **Applicant's response**

- 4.5.10 ES Chapter 3 [APP-051] outlines the search and option evaluation process which led the Applicant to conclude that gas was an appropriate technology, and to narrow its site search from a national field, to the Wrexham locality and then to the application site.
- 4.5.11 In strategic national search terms, ES Chapter 3 at paragraphs 3.7 - 11 reviews the policy considerations summarised at 4.4.2 - 3 above and concludes that gas is a policy supported generation technology. At paragraphs 3.14 - 16 the ES makes clear that the Applicant sought a relatively rare commodity, a location where grid networks with sufficient capacity to serve a new generating station, supplying gas as fuel and transmitting or distributing electricity can be found. This process led to the selection of locations in Staffordshire and near Wrexham. Both of these locations have now been the subject of applications for gas generation station DCOs.
- 4.5.12 In local search terms, the Applicant's site selection criteria are made clear and deserve setting out in full for clarity:
- *'a broadly level site of at least three hectares, ideally with more land and further space nearby for a construction laydown area;*
  - *proximity to gas and electricity connection points*
  - *road access suitable for construction and operational traffic;*
  - *avoiding areas of planning and environmental constraint including protected landscapes and areas, natural or heritage interest, undeveloped green belts and land in flood risk areas;*
  - *located within an area with the potential to supply surplus heat to land uses adjoining the site;*
  - *it is within an area identified as being potentially suitable for energy infrastructure;*
  - *a site that is separated from housing and other sensitive receptors such as schools;*
  - *previously developed or 'brownfield' land, and/or land allocated for industrial use; and*
  - *land which the landowner is prepared to lease or sell on commercial terms.'* [APP-051 at para 3.17]

- 4.5.13 Additionally, the Applicant sought to achieve the following:



- *'sufficient space is needed to install, access, operate and maintain all elements of the Power Station Complex in a safe and economic manner;*
- *a suitable medium (air and/or water) to provide cooling to the steam turbine exhaust steam condenser and for all other auxiliary cooling requirements;*
- *a suitable source of water for the boilers and for all other auxiliary requirements;*
- *surface water run-off and other environmentally benign liquid effluents can be discharged to a local watercourse or to sewer;*
- *all other liquid effluents can be discharged to a suitable sewer or treated on-site;*
- *the ground conditions are suitable for the installation of the civil structures and major plant items;*
- *the effects of the construction and operation of the facility on humans and the environment from emissions to air, land and water including nuisance can be adequately mitigated;*
- *all necessary permits and licences are in place or can be reasonably obtained; and*
- *there is the potential to minimise visual effects on sensitive receptors.'* [APP-051 at para 3.18]

4.5.14 Further detail in relation to the way in which these criteria bore on the selection of the individual application site are addressed in Section 4.5 below.

4.5.15 ES Chapter 3 at paragraphs 3.34 -37 is also explicit in recording that in relation to CCR, the Applicant kept the scale of the Proposed Development and its installed capacity under continuous review. It sought not to sterilise the additional land requirement for future CCS plant and hence a decision was made (as is a commercial investor's right) to prepare an application with an installed capacity below the 300MW CCR threshold.

4.5.16 Section 3 of the Applicant's response to relevant representations [REP1-035] rehearses the Applicant's approach to its deployment of the search criteria set out in the ES. It sets out in detailed terms how other possible local sites were considered and excluded, providing extensive reasoning on the Maelor Gasworks site. It identified that there is insufficient surplus land available at the gasworks for a power station, meaning that any development would have to break into new greenfield land with consequential adverse landscape impact. It suggests that the local policy framework provides less support for such an outcome.

4.5.17 These matters were all expanded upon orally by the Applicant at the Environmental Issue Specific Hearing on 28 September 2016 [REP3-014], summarised in section 5 of its reduction to writing.

4.5.18 It should be noted that whilst some documentation refers to the prospective benefit to WIE of locally embedded generation and enhanced electricity supply security for local businesses, the Applicant

did not rely on these matters in its justification for site selection as set out in its oral submissions on 28 September 2016.

- 4.5.19 The Applicant rebutted the suggestion that there was potential to use an alternative site near to Maelor Gasworks both in writing [REP1-035] and orally [REP3-014], summarised at paragraph 5.10 of its reduction to writing.

### **ExA conclusions**

- 4.5.20 On the broad questions raised by local resident IPs about the need for this generating station and the chosen fuel, I am clear that as a matter of NPS policy, there is a need for additional generating capacity across the UK as a whole. Further, there is a specific need and role for new fossil fuel plant and more particularly for new gas plant of the type applied for here. This need is identified and justified in NPS EN-1. As the need case for the technology chosen in the Proposed Development is supported by NPS EN-1, a positive policy case has been made out by the Proposed Development. In terms of PA2008 s106 (1) (b), arguments that the additional generating capacity and / or the chosen generating technology proposed here are not needed or are inappropriate need not be considered by the SoS as they relate to the merits of policy set out in a national policy statement.
- 4.5.21 Whilst there may be a local or sub-regional benefit to embed new generation capacity into the electricity distribution network, improving local or sub-regional security of supply, there is no particular need for the Applicant to demonstrate such an outcome, as long as the Proposed Development contributes to meet the national need for generating capacity as framed in NPS EN-1. I am clear that the Proposed Development does meet national need.
- 4.5.22 Turning to the question of whether the Proposed Development needs to be or should be CCR development, as a matter of policy, a threshold of 300MW of installed capacity has been adopted for the commencement of that policy requirement. The Applicant has applied for 299MW of installed capacity and so, as a matter of policy is not subject to CCR. In an energy market where generating capacity is produced by private investment, it is not unreasonable for an investor to propose the largest gas fired generating station allowable in policy terms, without incurring the costs associated with CCR. This is what the Applicant has done in this case and there is no argument against this approach that complies with NPS EN-1 policy.
- 4.5.23 Turning to the question of whether the Proposed Development could or should have been located on another site, a commercial applicant has to take account to a wide range of factors in selecting a site. I am clear that the site selection process has been rigorous and therefore that, having identified the application site, the Applicant is entitled to submit an application on it and have that considered. I have seen no evidence that leads me to the view that other sites have been unreasonably discounted. In reaching this position, I have given

consideration given the local interest to whether the Proposed Development could have been located closer to the Maelor Gasworks or on another site within the WIE. I remain clear that the Applicant has honoured the obligations to consider options and alternatives that arise from paragraph 4.4.1 of NPS EN-1 in tandem with the EIA process.

4.5.24 There might be an argument that a gas generating station could have been located adjacent to the Maelor Gasworks and that might have required a shorter gas connection alignment. This in turn might have mollified some community concerns arising from Ridleywood, Isycoed and Bowling Bank about the separation between residential and school uses and the application site that have been brought in to this Examination. However, the key question for me is to review whether in selecting the application site, the Applicant made a reasonable appraisal of alternatives and provided a sound rationale for the selection of the preferred site. I am clear that this process did occur and so there is no basis to fault the Applicant's selection of the application site in policy terms.

4.5.25 Also, and in closing reasoning on this point, I note that whilst a different application site at Maelor Gasworks or elsewhere on the WIE might well have pleased residents of Ridleywood, Isycoed and Bowling Bank by moving impacts further away from their immediate locality, it could equally have brought a different group of residents or businesses into equivalent or greater levels of conflict from such a proposal. For example, if a site at Maelor had been pursued, the settlements of Talwrn and Cross Lanes would have been in closer proximity to the development. Other factors, ranging from the fact that land at Maelor is greenfield land, landscape and heritage considerations due to extant remains from the former Royal Ordnance Factory Wrexham and closer interaction with the Afon Clywedog catchment may well have interposed too. It is by no means clear that such an option could provide any improvement in impact terms over the current Proposed Development. There are considerable indications that it would perform significantly worse in impact terms.

4.5.26 Taking all such matters into consideration, the SoS must consider the application site and technology before him. I am confident that he can and should do this on the basis that the site and technology selection process has been sound and robust.

## **4.6 SITING AND PRIMARY LAND REQUIREMENT**

### **Issues**

4.6.1 The decision by the Applicant to significantly reduce the installed capacity of the original generating station proposal whilst retaining the same application site gave rise to concerns about the justification for and design of the project on this site and the need for land, going beyond the option development process.

4.6.2 Local resident IPs expressed concerns that as the application site was capable of hosting a larger generating station than that proposed, the current site was either the wrong site, or that less of it was required for the Proposed Development and hence, possibly, that a different, or smaller site could have been used. They were concerned that the Proposed Development could be expanded to bring about a larger facility with greater impacts at some point in the future. They were concerned that it was wrongly located, on land that alternatively should be open, agricultural or should be available for manufacturing industry as part of WIE.

- Cllr Michael Morris [RR-025] questioned the choice of the site, suggesting that it was largely greenfield in character.
- Isycoed Community Council [RR-012] and Ms Nicola Vesty [RR-029] considered that the reduction in project size from up to 1,200 MWe to up to 299 MWe should have prompted a renewed site search.

4.6.3 A practical outcome sought by some objecting local residents in this respect was acceptance of the proposition that the Proposed Development was wrongly sited, due to the proximity between the application site and existing dwellings in Isycoed, the closest village to the east and north east of the application site and the related areas of Ridleywood and Bowling Bank. In the view of these IPs, flaws in option development and or the selection of an inappropriately large site all contributed to these concerns.

4.6.4 No concerns in principle about land use considerations in siting or the extent of the proposed land requirement were raised by government, public authority or utility IPs. Specific concerns were raised about possible impacts on the Kelloggs, but these are addressed in relation to air quality and emissions below. No other industrial land uses raised land use concerns.

### **Policy considerations**

4.6.5 NPS EN-1 section 5.10 emphasises that an applicant needs to take account of existing and adjacent land use and the effects of an Proposed Developments upon it in the siting and design of the Proposed Development. The development plan provides the main framework within which this should be viewed, although consultation with local authorities and the affected community should also be undertaken.

4.6.6 The LIR [LIR-001] identifies that Wrexham UDP policy E3 allocates land of which the application site is a part for a large single user, as an exception to broader UDP employment policies, outside the established development boundary of WIE. However, WCBC has

identified that subsequent appeal decisions<sup>16</sup> have overridden the initial intention of this policy. WCBC does not assert this element of the local policy framework as a reason for objecting to the Proposed Development. Further, the emerging development plan LDP2 (via the Joint Wrexham and Flintshire Employment Land Review (October 2015) identifies a need for an extension on the WIE of between 20 -30 ha that would be met in part by the application site. WCBC concludes its consideration of the local policy framework in the LIR by stating: *'as such there are no policy objections to the proposal subject to all other material considerations being satisfied'*.

- 4.6.7 EN-1 paragraph 5.10.3 identifies that the SoS should take account of the stage of development reached by a development plan document in addressing any questions of possible land use policy conflict and determining the weight to be given to the plan. Greater weight can be attached to an adopted plan.
- 4.6.8 NPS EN-2 section 2.2 makes clear that fossil fuel generating stations of all types require large footprints and so will necessarily rely on the availability of a suitably sized site. EN-2 paragraph 2.2.4 also identifies the need for land to be available in this case for CHP readiness.

#### **Applicant's response**

- 4.6.9 Chapter 4 of the ES - The Proposed Development [APP-052] describes the site of the Proposed Development. It provides a description of the built elements of the generating station and demonstrates how these are proposed to be accommodated within the site. It describes the development process and how this will require the TP of land
- 4.6.10 At sections 4.4 and 4.11, the ES describes the components of the scheme as follows:
- the combined cycle gas turbine (CCGT) power station (the Power Station Complex) (work numbered 1 in Schedule 1 to the DCO), fuelled by natural gas with an electrical generation capacity of up to 299 MWe;
  - temporary and permanent Laydown Areas (works numbered 2A and 2B in Schedule 1 to the DCO);
  - surface water drainage works (work numbered 3 in Schedule 1 to the DCO);
  - the landscaping and ecological mitigation works (work numbered 4 in Schedule 1 to the DCO); and

---

<sup>16</sup> APP/H6955/A/09/2113258 granted planning permissions for the UDP policy E3 land in a 'split' form, conceding the planning merits of a separate development on the application site from the other land subject to policy E3. APP/H6955/A/12/2188910 then granted a separate planning permission for land within the UDP policy E3 area north of the current application site. The policy support for a single large user proposal has been overridden to the extent that it is already established that it is in principle acceptable for the E3 site to be occupied by two separate entities.

- the alteration and use of the Kingmoor Park Access Road (work numbered 5 in Schedule 1 to the DCO).

Taken together these form the Power Station Complex Site and fall within the Order limits shown within the red line on the Works Plan [AOPP-008]. Additionally, the DCO includes:

- land for and powers related to the gas connection and an AGI at Maelor Gasworks) (taken together, the gas connection alignment).

All of this taken together is shown on the Land Plans [REP9-006] and described as the Order land.

4.6.11 From 4.12, the ES sets out the extent of the land for each component of the Proposed Development. It provides a clear basis for understanding that the land sought by the Applicant for the Power Station Complex is directly related to the technical requirements for the installation of power station buildings plant (3.3 ha) and for the construction of those buildings and plant. A substantial element of the land permanently required (5 ha) is required for landscape and ecological mitigation measures. It also makes clear that land required for construction and surplus to requirement following construction would be subject to TP powers only and would then become available for other development (Plots PS1A and PS1B). The Applicant is not seeking an excessive land area or seeking to construct a larger power station than that applied for within the Order limits.

4.6.12 The Applicant disputes that the application site is greenfield land. It highlights the development plan policy status of the site and its planning history, both in terms of decided appeals and of former industrial use. Figures 4.3 and 4.4 of the ES are historic aerial and elevation photographs, which show very substantial built structures and silos related to the former Owens Corning fibre-glass factory. These were demolished in 2005 and so pre-date the construction of a number of residences in the Isycoed area.

### **ExA conclusions**

4.6.13 I have noted the significant reduction in installed capacity between the original (2012) generating station and the one which now forms the main element of the Proposed Development. Whilst I understand the concerns of local resident IPs that the DCO should not provide an over-generous site in which a larger plant could evolve, having considered the evidence provided by the Applicant within the policy framework, it is clear that the Proposed Development has made a good case for both the selection and extent of the application site. The Applicant accounts for all of the land that it intends to use. Taking into account that the Land Plans [REP9-006] provide for temporary possession (TP) for construction purposes, followed by a subsequent release of a significant part of the application site (Plots PS1A and PS1B) for other use and development, I accept that the operational

portion of the site is appropriate to the current scale of the Proposed Development and has been minimised.

- 4.6.14 In planning history terms, it is clear that the former use of the application site included a major industrial use (the Owens Corning fibre-glass factory), with tall structures of greater landscape and visual implications than the current Proposed Development. I do not place weight on the information that I have about emissions from that facility, as it was anecdotal in nature: however, it appears that there were air emissions from processes on the site. Whilst the large structures and adverse effects associated with this historic use have been missing from the site for a number of years and may not be recalled to mind by some local residents, nevertheless, substantial industrial development do not form an alien land-use incursion into this site. Other parts of the site have a history of use for car parking and recreation (including playing fields and a fishing lake) associated with large-scale industrial use. I do not accept that the application site is greenfield land.
- 4.6.15 In land use terms, it is clear from the outcome of the appeal decision (APP/H6955/A/09/2113258) on land including the former fibre-glass factory site on the north-eastern side of the WIE that the main application site has outline planning permission for warehouse and storage development uses and hence also has a major development future land use. Such development would also have landscape and visual impact and other relevant implications. The emerging LDP2 also envisages an industrial future land use as part of the WIE, a position which underpins the absence of strategic objection to the Proposed Development from WCBC. The suggested adverse effects of the Application Proposal have to be evaluated within a context informed by both historic and by policy-supported and permitted future use and development.
- 4.6.16 I agree that the Proposed Development broadly accords with the local policy direction and responds positively to the planning history of the site. That being said, I also note that within the framework of NPS policy and the need case for fossil fuel development, it would not have been fatal to the application had the Proposed Development not been broadly compliant with the emerging LDP2.
- 4.6.17 Taking these matters together, I am satisfied that the accommodation of the Application Proposal on the site accords with NPS policy and that it represents a supportable and appropriate use of its site.

## **4.7 THE GAS CONNECTION**

### **Issues**

#### ***The gas connection alignment***

- 4.7.1 The land requirement for the gas connection relates to land required that is beyond the site sought to be developed for the generating station (the main site). This is land to provide for the construction

and operation of a gas connection alignment between the main site and the existing gas transmission supply at Maelor Gasworks.

4.7.2 However, it must be recorded at the outset that the draft DCO does not seek development consent for or powers to construct this connection alignment, but is limited to seeking powers to compulsorily acquire (CA) and / or take temporary possession (TP) of the land necessary for the connection alignment, together with supporting powers relating to matters such as access, survey, tree and hedgerow works.

4.7.3 A more detailed description of the matters arising from representations with respect to this land is provided in Chapter 7 below with reference to the Book of Reference (BoR) and to the Land Plans submitted with the application. That consideration addresses the CA, TP and related powers sought by the Applicant. In this Chapter, it is only necessary to address a preliminary question about the nature of the powers sought and to explain why planning merits considerations raised by IPs in large part are not relevant to the decision to be taken by the SoS.

#### ***Provision for associated development versus ancillary land***

4.7.4 The preliminary question relates to the statutory power for an application for development consent in Wales to contain CA and / or TP provisions in relation to a gas connection, which if provided for in the draft DCO would be associated development. This is a technical question that I have raised with the Applicant and examined.

#### ***General land use considerations about the gas connection alignment***

4.7.5 Given that the draft DCO does contain CA and TP powers for a gas connection alignment, questions were raised by local resident IPs about whether the land selected is 'in the right place' and the most appropriate land in land-use terms.

- Mr Clive Roberts [RR-006] and Ms Joanna Roberts [RR-013] were concerned that the main application site requires extensive development to connect it to a gas supply that could or should have been avoided if another site had been chosen.
- Mr Frank Lloyd [RR-010], Ms Kathleen Briggs [RR-019], Ms Marian Hughes [RR-022] and Ms Barbara Pilson [RR-002] were concerned about the proximity of the proposed gas connection alignment to existing housing and to the local primary school in Isycoed.

4.7.6 The existence of these concerns is recorded here. Related concerns about the safety of operation and hazard management relevant to nearby residential uses and to the primary school in Isycoed are addressed in section 4.18 of this chapter below.



4.7.7 However, it must be recorded at this stage in this report that only the most limited consideration of what amount to planning merits considerations applicable to the gas connection alignment can be provided here. Paragraph 1.8.2 above records that planning permission for the gas connection alignment was granted to the Applicant by WCBC on 5 September 2016 under reference P/2016/0358. This means that the acceptability in-principle of this proposed development has been resolved. It is not a matter before me or which the SoS will decide. All the SoS has to decide in relation to the gas connection therefore is the appropriateness of including additional powers relating to this land in the DCO to facilitate a proposed that is already consented development. As these additional powers largely relate to CA of rights for the passage of a pipeline and TP of land for its construction, these are matters addressed in Chapter 7 (CA and TP) below and then in Chapter 8 (DCO).

***Possible changes to the gas connection alignment:  
the permitted solar farm***

4.7.8 The general position in relation to the gas connection alignment set out above being noted, a particular issue nevertheless arose in relation to it that does require further consideration. The gas connection alignment is proposed to pass through land at Pickhill Bridge Farm, Cross Lanes, owned by Mr Gerard Owen (described as Plots GC12, 12A and 12B on the Land Plans [REP9-006]) and on which planning permission has also been granted for a solar farm. As is recorded from paragraph 2.4.5 above, Earthworm Energy Ltd (Earthworm) gained planning permission for a solar farm on this land from WCBC on 31 July 2015 under reference P/2015/0287 and work on its construction is now underway. Whilst the planning permission to construct the gas connection alignment granted on 5 September 2016 under reference P/2016/0358 enables the passage of the alignment across the solar farm, by the time of the examination the Applicant was engaged in discussions with Mr Owen and Earthworm in an attempt to secure a diversion to the gas connection alignment in this location.

4.7.9 The existence of this potential diversion has a bearing on the CA case made for this element of the gas connection alignment. This matter is also addressed in Chapter 7 (CA and TP) below and then in Chapter 8 (DCO). The passage of the gas connection alignment across the solar farm also raises matters relevant to protective provisions and those are addressed in Chapter 7 below.

***The Maelor Gasworks connection and AGI provision***

4.7.10 For a gas supply to be provided for the Proposed Development, gas would be transferred from the existing national transmission system at the Maelor Gasworks operated by National Grid Gas (with associated companies) and Wales and West Utilities (WWU), to a new above ground installation (AGI). This AGI would form the head of the new

pipeline connection to the WEC main site. The AGI would be housed in a new compound, referred to as the AGI compound.

- 4.7.11 The AGI compound is located on land immediately adjacent to an existing portion of the Maelor Gasworks. The land requirement for the extent of the AGI compound has been calculated as being sufficient for the plant installation and for the provision of a secure perimeter. Again, land use considerations relating to this proposal have been addressed through the grant of planning permission for the gas connection by WCBC on 5 September 2016 under reference P/2016/0358.
- 4.7.12 The Maelor Gasworks has been designated as an energy sector Critical National Infrastructure (CNI). As such, relevant standards for the provision of perimeter security for the gasworks must also be met. Whilst the gasworks has an existing perimeter fence, this has not been designed or constructed to CNI standards, so a new perimeter that meets these standards must be provided and must pass between the existing gasworks and the proposed AGI compound. Elements of the CNI standards define separations between boundaries and plant and define the width and design of the boundary zone and structures. A final design process is underway. However, it was unable to be completed during the Examination.
- 4.7.13 These are matters that bear on the appropriateness of CA, TP and related powers in the DCO. They also raise further questions about protective provisions and the status of WWU as a statutory undertaker for the purposes of PA2008. Once again, these are matters that are addressed in Chapter 7 (CA and TP) below and then in Chapter 8 (DCO).

#### **Policy considerations**

- 4.7.14 All relevant policy considerations are identified in Chapter 7 below.

#### **Applicant's response**

- 4.7.15 The applicant's case and response to the issues raised are identified in Chapter 7 below.

#### **ExA conclusions**

- 4.7.16 In relation to the generality of the gas connection alignment, having inspected the great majority of the land required for it and also considered for EIA and HRA, cumulative and in-combination impact purposes<sup>17</sup> the possible alternatives to that alignment, I am satisfied that no matters have arisen that indicate against this aspect of the Proposed Development or give rise to a need to change the DCO, with

---

<sup>17</sup> I include a more detailed evaluation of alternatives in Chapter 7 (CA and TP) below in section 7.6.

the exception of issues applicable to the solar farm at Pickhill Bridge Farm and the Maelor AGI that I briefly address further below.

- 4.7.17 On the solar farm, I have considered whether the interface between the solar farm and the proposed gas connection alignment gives rise to matters that can and should be provided for in protective provisions. I suggested to the Applicant that protective provisions would be justified, as a consequence of which it has developed draft protective provisions and included these in the draft DCO. However, there is an outstanding issue that requires consideration by the SoS, namely that if an alternative gas connection alignment to avoid the solar farm can be agreed and is consented, should the largely CA and TP powers provided for in the draft DCO be granted over land in the solar farm where they may not prove to be necessary and may damage the interests and operation of solar farm? I address these questions together in Chapters 7 (CA and TP) and 8 (DCO) below.
- 4.7.18 Turning to the Maelor Gasworks connection and AGI provision, the final Land Plans (revision 5) submitted at D9 [REP9-006] show an extent of land for the AGI (AGI1) that is the same as that shown in the plan annexed to the WWU DL8 submission [REP8-003]. On this basis, I am satisfied that whilst a final agreement between WWU and the Applicant is outstanding, the most recent Land Plans [REP9-006] do not suggest that there is a significant outstanding deliverability consideration arising from the proximity between the ancillary land requirement for the proposed AGI and the gasworks or a lack of land on which to meet CNI secure perimeter requirements. Matters relating to CA, TP and protective provisions are also addressed separately below in Chapter 7 (compulsory acquisition) and Chapter 8 (the draft DCO) below.

## **4.8 THE ELECTRICITY CONNECTION**

### **Issues**

- 4.8.1 It is important to be clear that, consequent on the Applicant's decision not to pursue an overhead line option for the electricity connection to the distribution network, no land is required or sought for any part of the currently proposed electricity connection outside the main application site. The distribution network operator (DNO) currently proposes to connect the generating station to the network via an underground cable, deliverable mainly on highway land within existing permitted development powers. Unlike the gas connection, it follows that the draft DCO does not contain any powers to acquire or possess land for an electricity connection as the DNO already benefits from the powers to construct and operate a connection of the type currently proposed.
- 4.8.2 That position being observed, local resident IPs who were aware of a non-statutory consultation carried out in 2012 for a much larger 1,200 MWe generating station with an overhead line electricity connection to the transmission system were concerned about the possibility that,

having received consent for a scheme with an underground connection, the Applicant and/or the DNO might revert to an overhead line connection, with consequent implications for a further land requirement and development impact that is not in the application before me and for a range of cumulative impact assessments of the network connection with the current Proposed Development.

4.8.3 As a matter of history, the now abandoned 1,200 MWe proposal gave rise to extensive local opposition, manifest in the formation of a local pressure group, Wrexham Residents Against Power Scheme (WRAPS) (recorded in the Applicant's Consultation Report at section 4.2 [APP-039]). The subsequent decisions by the Applicant to significantly reduce the installed capacity of the generating station, to move to a connection to the distribution system and hence for the DNO to be able to consider an underground connection were broadly welcomed by many members of the local community. They were material to the decision of the WRAPS campaign group not to object to the current application [APP-039 at pg24]. This provides a positive example of the way in which an applicant and a related infrastructure provider can act to respond to locally expressed concerns raised through a non-statutory consultation process and make design changes that significantly reduce the prospect for adverse impacts across a broad range of measures.

4.8.4 That being said, the Applicant's commitment to the current Proposed Development was not universally believed by the local community. Several IPs were concerned that the underground connection proposal was of the nature of gambit and that there would be a reversion to an overhead line proposal if the Proposed Development were to be consented. The most strongly expressed concerns related to landscape and visual impact, but matters pertaining to other elements of impact such as biodiversity were also raised.

- Mr Stephen Whitby [RR-036], Mr Clive Roberts [RR-006] and Ms Joanna Roberts [RR-013] questioned the ability of the existing electricity distribution network to accept the electricity generated by the Scheme.
- Sesswick Community Council [RR-034] shared this doubt and expressed concern about the possibility of pylons being constructed at a later date.
- Ms Barbara Pilson [RR-002] asked whether overhead cables could still be required and in doing so articulated an underlying concern shared by a number of local resident IPs.

### **Policy considerations**

4.8.5 The Applicant put to me that there was no directly relevant policy provision.

4.8.6 NPS EN-5 is the NPS for electricity networks. It is applicable in principle to network elements such as new transmission alignments, significant new distribution network alignments and associated

infrastructure. However, the proposed electricity alignment does not form part of the application before the SoS. It would be provided separately by the DNO using permitted development powers and is anticipated to be underground.

- 4.8.7 Undergrounded electricity infrastructure does not fall within the scope of the definitions of NSIPs in PA2008. NPS EN-5 is not applicable to undergrounded electricity infrastructure.
- 4.8.8 Where an alignment can be developed without a specific consenting process, the only relevant considerations are the legal obligations falling on the infrastructure provider, including (amongst others) the obligation under the Electricity Act 1989 to provide the most economic and efficient means of connection. But even these considerations do not bind on the decision maker in relation to an NSIP which is to be connected and for which development consent is required.
- 4.8.9 It is for the DNO to determine how and where to accept the exported electricity and to determine what if any additional network reinforcement or infrastructure would be required. It is for the DNO to design and cost this in preparing its connection offer.

#### **Applicant's response**

- 4.8.10 The Applicant makes clear in its grid connection statement [APP-154] as updated [OD-006-7], responses to relevant representations [REP1-035], written representations [REP2-010] and oral submissions on 29 September 2016 [REP3-015] that it does not own and would not operate the electrical connection. The connection would be provided, owned and operated by the DNO. In doing so the DNO must meet their statutory obligation under the Electricity Act 1989 to provide the most economic and efficient means of connection. The fact that the DNO has made an underground offer, suggested that it saw such as offer as compliant with its Electricity Act 1989 duty. The DNO has made a connection offer and that is all that is required to demonstrate that it can take the electricity proposed to be generated into the network via the means that it has proposed.
- 4.8.11 Whilst theoretically, the Applicant could reject the DNO's connection offer, to do so would be at considerable risk as it would leave the Proposed Development without a means of exporting its product: electricity. The Applicant could request a new offer, but because the DNO had already provided an underground solution as its best offer, it would be most unlikely that this fundamental position would change in any new offer.

#### **ExA conclusions**

- 4.8.12 On the matter of the electricity connection, I have given careful consideration to the concerns raised by local resident IPs. I am conscious that questions raised by the connection were matters of deep concern to several IPs. I am also conscious that the decision to remove the overhead line connection from the project will have been

material to the decision of other local residents involved in the earlier WRAPS campaign group not to object to the current application. It is in order to respond appropriately to these issues that I devote the following paragraphs to a matter that is not an important and relevant consideration for the SoS' decision.

- 4.8.13 The currently offered electricity connection is not part of the application before me because it does not need to be. It can be delivered using permitted development powers. I have examined it, only in so far as I need to for EIA and HRA purposes, to gain a complete understanding of cumulative and in combination effects that operate together with the Application Proposal. I am satisfied that there are no such effects of sufficient scale to warrant any change to the DCO.
- 4.8.14 However, it is a matter of note that there is no security in the draft DCO that specifically limits the DNO (whose project the connection would be) to the provision of the underground connection that it has offered to the Applicant. The concern by IPs therefore remains that if the DCO were to be made in its current form, there is nothing to prevent the DNO reverting to the provision of an overhead line. Recognising this concern, I have considered whether it is appropriate or even possible to secure in the DCO that the electricity connection must be underground. However, I am clear that I cannot and should not recommend in such terms.
- 4.8.15 I cannot recommend DCO security for undergrounding as a matter of law, because strictly as either a separate project or as associated development in Wales, development consent for the electricity connection is beyond the scope of the DCO. Like the gas connection, all a DCO could provide for in Wales would be land and powers provisions for an overhead line connection. If there is no requirement for land or powers as is the case here, then there is nothing within the scope of the draft DCO to provide.
- 4.8.16 Further, even if it should transpire that the DNO's current underground connection offer cannot proceed (which would imply a significant departure from the evidence provided in this examination), NPS EN-1 section 4.9 provides that electricity connections are matters for the market place and an applicant may (at its own risk) even apply for a generating station without having provided a means of electrical connection.
- 4.8.17 Drawing this matter to a close however, I consider that local resident IPs can take considerable comfort from the following matters. Firstly, the submitted Grid Connection Statement [APP-154] has been replaced with an updated statement that expressly provides as much certainty as possible around the detail of an undergrounded electrical connection [OD-006-7]. This in turn has been taken into account in an Addendum to the ES for cumulative effects purposes [REP2-015], in which the implications of an undergrounded connection have now been fully taken into account. This Addendum in turn is required to be

submitted to the SoS for certification pursuant to Article 2 and Article 35 of the draft DCO as provided for in Schedule 2 at Table 1. Although not formally 'secured' as such, the undergrounded connection proposal has now been substantially bound into the information base that defines the context for the Proposed Development.

4.8.18 Also, as a matter of practicality, the Applicant would invite delay to its proposal if it were to reject the current underground connection offer. The obligation placed on the DNO by the Electricity Act 1989 to provide the most economic and efficient means of connection would also be likely to mean that any new connection offer would be similarly designed and underground.

4.8.19 For all practical purposes therefore, whilst I cannot recommend a change to secure an underground connection that is not part of the application in the DCO, the effect of the document certification provisions in the DCO, taken together with the law relating to EIA and electricity distribution provide the local community with a reasonable level of assurance that a change to the electrical connection would be unlikely to lead to a significantly different outcome. That on balance appears to be sufficient to address their concerns.

## **4.9 OTHER STRATEGIC PROJECTS AND PROPOSALS**

### **Issues**

4.9.1 The Proposed Development exists within a socio-economic context provided by WIE. In this context, the Applicant has considered the interplay between the Proposed Development and WIE and wider employment effects in NE Wales. It has also considered the effects of the Proposed development on:

- the Kingmoor Park North development of B1 (office), B2 (General industrial) and B8 (storage and distribution) uses, immediately north of the Power Station Complex Site;
- Pickhill Bridge Farm solar farm (discussed both above and below in Chapters 7 (CA and TP) and 8 (DCO)); and
- the North Wales Prison on the former Firestone site in the WIE, currently under construction.

4.9.2 No representations were received from persons associated with the Kingmoor Park North development or from the North Wales Prison project. Issues have been raised in respect of the Pickhill Bridge Farm solar farm but these are dealt with in Chapter 7 (CA and TP) and Chapter 8 (DCO) of this report.

### **Policy considerations**

4.9.3 Section 5.12 of EN-1 paras 5.12.3 – 5 requires an assessment of all relevant socio-economic impacts, which should extend to employment effects and cumulative effects with other known projects.

## **Applicant's response**

- 4.9.4 The ES socio-economic evaluation [APP-054] identifies the socio-economic effects of the Proposed Development as net positive. It directly considers the other strategic projects identified above and identifies net positive effects on these. With the exception of the solar farm which is separately considered below, there were no direct representations on behalf of entities responsible for these strategic projects and proposals identifying effects on them.

## **ExA conclusions**

- 4.9.5 With the exception of the solar farm that is addressed separately below, I agree that the Proposed Development causes no identifiable harm to the other projects and proposals considered in the ES.

## **4.10 INTRODUCTION TO ENVIRONMENTAL EFFECTS**

- 4.10.1 The following sections of this Chapter address the following issues that are relevant to the environmental effects of the Proposed Development:

- landscape and visual impacts;
- historic environment;
- design;
- biodiversity, ecology and natural environment;
- air quality and emissions, debris and waste;
- combined heat and power (CHP) readiness;
- water environment;
- risk and hazard management;
- noise and vibration;
- transportation and traffic;
- socio-economic effects; and
- other matters.

## **4.11 LANDSCAPE AND VISUAL IMPACTS**

### **Issues**

- 4.11.1 At the government level, NRW provides statutory advice to the Welsh Government on landscape matters and pays particular regard to designated landscapes. NRW's response to my FWQs [REP1-015] made clear that it had no outstanding concerns on the Proposed Development in respect of the Clwydian Range and Dee Valley AONB or the Maelor Registered Historic Landscape. In respect of effects on these protected landscapes, NRW considered the methods used in the landscape and visual impact assessment to be appropriate and compliant with policy. In [RR-016], the Joint Committee for the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB) considered the impact of the application on that designation. It concluded that the Proposed Development would be seen within the existing developed context provided by WIE and there would be no materially adverse effect on the AONB. It made no observations on



the application. Whilst the application site viewshed extends into England, NE made clear that it too had no concerns [REP1-014].

4.11.2 However, of the topics for evaluation identified in the ES and then drawn out as issues for examination, landscape and visual impact was one of the most controversial and substantially argued by individual, largely local resident IPs.

- Mr Stephen Whitby [RR-036] was concerned about the effects of the Proposed Development on the landscape in general and the residents of Ridleywood, Isycoed and Bowling Bank. Concerns over the proximity of the development to local residents were also raised by Mr Dennis and Ms Angela Edwards [RR-007], Mr Martin Shea [RR-023], Mr John Graville [RR-0015] and Sesswick Community Council [RR-034].
- Sesswick Community Council [RR-034], Mr Frank Lloyd [RR-0010], Mr Martin Shea [RR-023] and Mr John Graville [RR-0015] were concerned about proximity to the local primary school.
- Ms Nicola Vesty [RR-029] suggested that the Proposed Development would ruin a beautiful area and a gateway into Wales.
- Mr Frank Lloyd [RR-010] considered that the power station would be situated in and harm open countryside.
- Cllr Michael Morris [RR-025] was concerned about visual effects, given his view that the previous use of the site was as a surface car park with no medium to long range visual impact.
- Ms Elizabeth Cross [RR-009], Mr John Graville [RR-015] and Mr Jonathon Young [RR-017] were concerned about the landscape effects of the proposed combustion process stack or stacks and their visibility in the landscape. Ms Susan Harber [RR-037] and Mr Clive Roberts [RR-006] raised similar concerns regarding the location of the main application site on the edge of the WIE, suggesting that in landscape and visual terms the siting of the development made it incapable of concealment.
- The relationship of the Proposed Development to the WIE was of concern to Mr Grant Scott [RR-011], who considered that the development would be out of keeping with the mainly low visual impact of light industrial use and development there at present.
- Isycoed Community Council [RR-012] and Mr John Graville [RR-015] suggested that other sites in the industrial estate would enable the power station to be less visually intrusive.

Most of these IPs shared common concerns that visual bulk and massing of the Proposed Development, together with individual components of it, particular the stacks, would lead to it becoming an intrusive and visually dominant feature causing visual and landscape harm. Related concerns were raised, suggesting the mitigation of such harm through the use of possible alternative former power station sites or at Maelor Gasworks. I have addressed these as option development considerations above, but take relevant landscape and visual considerations into account here.

4.11.3 Concerns were raised in hearings about the possible visual impact of plumes from stacks and cooling apparatus [REP6-002][REP6-014]. Mr Chris Briggs referred to Rocksavage, a combined cycle gas turbine power station near Runcorn in Cheshire. Ms Joanna Roberts referred to Deeside Power Station. Photographs of stack and cooling plumes from both facilities were provided to support assertions that plume appearance would have long range landscape implications. These became matters on which I raised a question under Rule 17 [PD-013 question 12].

### **Policy considerations**

4.11.4 Policies relevant to landscape and visual impacts are set out in NPS EN-1, EN-2 and EN-4 and Wrexham UDP policies PS2 and EC5.

4.11.5 In relation to the generating station development, a degree of adverse landscape and visual impact is acknowledged to be unavoidable. Paragraph 5.9.8 of EN-1 states that '*[v]irtually all nationally significant energy infrastructure projects will have effects on the landscape*'. This is amplified by paragraph 5.9.15 which says:

*The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The [SoS] should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.*

4.11.6 Paragraph 2.6.5 of EN-2 acknowledges that '*[i]t is not possible to eliminate the visual impacts associated with a fossil fuel generating station*'.

4.11.7 Special considerations apply to developments within nationally designated landscapes (which this proposal is not) (NPSD EN-1 at section 5.9). The application site is prospectively visible from the Clwydian Hills AONB (albeit at long range). NPS EN-1 at paragraph 5.9.12 makes clear that sensitive siting and design should avoid compromising the purposes of relevant designations. However, '*[t]he fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent*' (NPS EN-1 paragraph 5.9.13). Local landscape designations (set out within development plans) must be taken into account and harm should be mitigated where possible, but are not seen as justifying a reason for refusal, and the SoS must consider whether the project evidences good design (EN-1 paragraphs 5.9.14 - 17).

4.11.8 Applicants are expected to undertake detailed evaluations of visual impacts at relevant individual receptors and to prepare such design and landscape mitigation proposals as can reasonably be provided, having regard to the intrinsically large scale and impactful nature of energy generation infrastructure.

4.11.9 In relation to the gas connection, paragraph 2.21.2 of NPS EN-4 makes clear that '*[l]ong term impacts upon the landscape for pipelines*

*are likely to be limited, as once operational the main infrastructure is usually buried'. Residual or enduring impacts relate to matters such as tree loss or enduring gaps in hedgerows. It should also be noted that the operational development of the gas connection alignment is not a matter in this application and so landscape impact mitigation is a matter for WCBC to whom the planning applications for that facility have been and will be made.*

### **Applicant's response**

4.11.10 Chapter 10 of the ES (landscape and visual impact) [APP-058] describes the siting and design measures taken to minimise landscape and visual impact. Inherent and additional mitigation measures in respect of landscape and visual impacts are described in paragraphs 10.62 to 10.75 and 10.142 to 10.149 of the ES. These include:

- locating the main built elements in the south-western corner of the main site, where they are well screened by existing vegetation, thus providing the maximum possible separation from most nearby residential receptors;
- hedgerow and existing tree and shrub planting alongside Bryn Lane to forming a visual screen and buffer between the highway and the main built development;
- constructing a new landscape bund incorporating native woodland planting to reinforce the screening effect of existing vegetation on the eastern boundary of the application site; and
- maintaining the existing mature trees between the main built development and the Kingmoor Park North site.

4.11.11 The Applicant acknowledges that that the Proposed Development will result in significant effects during construction and operation for some visual receptors, including some residential properties with views towards the vertical elements of the Scheme across a relatively flat landscape, but does not view these as being contrary to policy [REP2-010] at page 34.

4.11.12 The Applicant also highlights that the main built elements of the Proposed Development would be located in an industrial setting and context provided by the existing WIE.

4.11.13 Mitigation proposed and secured includes:

- R2 of the DCO framing maximum scale and height;
- R3 requiring submission of a landscape and ecological management plan in which the proposed landscape mitigations would be addressed; and
- R13 requiring a night lighting scheme.

The Applicant views these as policy compliant and sufficient taken together to provide all mitigation necessary to address adverse landscape and visual effects. All residual effects are considered to be appropriate within the framework provided by policy.

- 4.11.14 The Applicant does not propose any measures at the broader landscape scale as it its view there is no material harm to the AONB or to wider landscapes. With respect to my Rule 17 Question about the landscape impact of plumes [PD-013 question 12], the Applicant confirmed that both Rocksavage and Deeside power stations use evaporative cooling (a wet cooling process which inherently gives rise to visible plumes). The Proposed Development will use air cooled condensers and these are secured in Schedule 1, Work No. 1A(d) of the draft DCO. This is a dry cooling process which cannot produce visible cooling plumes. It also has the benefit of reducing the relative humidity of the local air mass, making it less likely for a visible plume to form from combustion stack emissions [REP7-004].
- 4.11.15 The formation of a visible plume from combustion emissions is a matter that falls to be regulated through the EP process. However, as gas is a dry fuel, it is not considered to have a propensity to form visible plumes (less than 5% occurrence) and the ES has assessed impacts on that basis [REP7-004].

### **ExA conclusions**

- 4.11.16 I have given very careful consideration to landscape and visual impact considerations. As part of the Examination, I have undertaken accompanied site inspections to key receptor locations in Ridleywood, Isycoed and Bowling Bank and to the great majority of plots proposed for compulsory acquisition and /or temporary possession along the gas connection alignment. I have undertaken a significant number of unaccompanied site inspections to review the approach taken to visual receptor selection analysis and landscape analysis in the ES.
- 4.11.17 These inspections have included inspections at night to review light emissions from WIE as perceived from residential receptor locations and across the seasons, viewing trees and vegetation in its summer, and autumn leaf and following leaf-fall in winter. Multiple inspections have been made of views from Ridleywood, Isycoed and Bowling Bank, taking views from residences, the school and church into account. Medium to long range inspections have been undertaken, testing possible landscape and visual impacts from the setting of the River Dee and nearby villages, from the Cheshire sandstone ridge near Bickerton and from the urban edge of Wrexham itself [EV-001][EV-013][EV-014][EV-025][EV-026][EV-027][EV-034].
- 4.11.18 I have used my site inspections to gain an appreciation of the concerns raised in representations and to test the adequacy of policy responses made by the Applicant in the EIA and design processes.
- 4.11.19 My first observation is that the application site has been carefully chosen in landscape and visual impact terms. The site is well contained and screened by mature trees and hedgerows, including a large number of the oak trees characteristic of the Dee valley. Whilst nearly all of the screening vegetation is deciduous, having reviewed it in winter (18 January 2017), I am clear that existing vegetation

density and the overlaying of multiple mature trees and hedgerows ensures that the site containment and screening in winter is also of a high standard.

- 4.11.20 In addition, the Applicant proposes substantial reinforcement of the landscape setting of the Proposed Development. It has also taken careful steps in siting both the generating station and the gas connection alignment to retain as many mature trees as possible and to ensure that the development process retains the substantial landscape and visual screening enjoyed by the site.
- 4.11.21 I am clear about the scale and bulk of the Proposed Development. The proposed buildings and most notably the stack or stacks will be seen over a wide area. Table 3 to R2 establishes three dimensional building envelopes for all of the proposed buildings on the power station site and maximum heights for stacks and other engineering elements. These secure the maximum extents of these structures as assessed in the ES and thus provide that what is constructed will be within the Rochdale Envelope for the Proposed Development. Of these structures, the most substantial landscape and visual impact will emerge from the stack or stacks (with a maximum height of 50m), the heat recovery steam generator building(s) (with a maximum height of 35m) and the gas turbine building (with a maximum height of 25m).
- 4.11.22 These values are maxima. What is constructed may not utilise all of the provided envelope. That being said, matters such as stack design processes to achieve appropriate air emissions standards are likely to limit the ability for elements such as the stack(s) to be significantly reduced in height.
- 4.11.23 Whilst the Applicant has suggested that the chosen cooling methods and the nature of the flue gas emissions mean that there will not be the extensive visual effects from plumes seen from some power stations, even occasional visible plumes due to rare atmospheric conditions will be highly visible over a wide area. There is little that can be done about such impacts, but I am clear that on the basis that the Applicant has undertaken an effective process through both siting and design to minimise landscape and visual harm (as it has), such residual effects are allowable in NPS policy terms.
- 4.11.24 Turning to local residential visual receptors, I am clear that a number of these in Ridleywood, Isycoed and Bowling Bank will experience a substantial change to their current outlook. However, the levels of additional landscape and visual harm to be experienced are within the reasonable parameters of that to be expected in the setting of an established industrial estate (WIE). I am satisfied that none of the effects are so adverse as to breach relevant NPS policy or to constitute a reason for refusal. Visual screening provided by existing and proposed vegetation will provide a material level of mitigation.
- 4.11.25 Visual receptors at medium and longer range will experience acceptable levels of impact. The Proposed Development will be seen

as one of a number of large industrial elements in the WIE in its existing landscape setting, but there will be no policy non-compliant impacts.

- 4.11.26 Turning to longer range views and significant landscapes, I agree that there will be no material harm to views from of the setting of the Clwydian Hills AONB or the Maelor Historic Landscape. Views from the Cheshire Sandstone Ridge will be affected but not to a degree warranting refusal or any further change to the scheme, as the Application Proposal will form a relatively small element of the wider visual background provided by the WIE.
- 4.11.27 Turning to the matter of plumes, I am content on the basis of the information before me that the secured air cooling process is not one that will give rise to plumes of the nature of those observed at Rocksavage and Deeside and that were the basis for community concerns. I accept the Applicant's evidence that there is a low (less than 5% likelihood) of combustion plumes forming, but note that the precise design detail of combustion plant and stack(s) design are matters for the EP process. I consider that the Proposed Development will be able to operate within the Rochdale Envelope provided by the ES. Combustion plume occurrence at up to 5% likelihood appears to me to be an adverse but acceptable impact in landscape and visual impact terms.
- 4.11.28 I conclude that the Proposed Development as provided for in the recommended DCO represents good design in landscape and visual terms and will be policy compliant.

## **4.12 HISTORIC ENVIRONMENT**

### **Issues**

- 4.12.1 Historic built environment matters were not widely raised in representations and did not become a major matter addressed at hearings. However, I have considered the approach taken to the historic built environment in the ES and the design of the Proposed Development. I sought advice from WCBC as local planning authority and from Cadw as the statutory adviser to the Welsh Government on the historic built environment about the adequacy of the application's response to historic built environment and archaeological issues.
- 4.12.2 WCBC agreed the ES findings on the historic built environment, subject to possible additional comment from Clwyd Powys Archaeological Trust on archaeological matters [LIR-001], and provided input into Issue Specific hearings on the draft DCO. Cadw and Welsh Government entered into a SoCG [REP2-016]. Included in this agreement were the following positions:
- The Proposed Development has no effect on and sites of archaeological or cultural heritage interest managed by Cadw that are of value to the local economy through employment or tourism.

- The methodology and findings of ES Chapter 12 on the historic agreement was agreed.
- The specific identification of designated and undesignated heritage assets in the historic built environment study area were agreed.
- The chapter was agreed to accurately summarise the archaeological potential of the study area.
- The chapter (at 12.92 -149) provides a balanced and reasonable assessment of the individual and cumulative effects of the Proposed Development on the historic environment during construction and operation, the conclusions in respect of which were agreed.
- DCO R8 makes appropriate provision for the submission, approval and implementation of an archaeological watching brief during construction.

4.12.3 Historic England undertook a review of those elements of the study area within England. However, it found no designated features [AS-001] and raised no concerns.

4.12.4 Clwyd Powys Archaeological Trust was invited to attend the environmental issue specific hearings held in November 2016 to address a possible need for additional definition around archaeological investigations, in its role as an advisor to WCBC. It was unable to attend. The Trust expressed some reservations [AS-005] about the lack of physical survey work at application stage and viewed the impact on sub-surface archaeology as inadequately characterised. However, it did not attend a hearing to explain the basis for this concern and nor did Cadw or WCBC raise any further concern in corroboration or request that any steps should be taken other than those that Applicant already proposes to take.

4.12.5 The landscape study undertaken for the ES set out some receptors chosen because of their historic built environment values. I conducted site inspections of a sample of these. Whilst there were no direct effects, I considered possible effects on the settings of these assets, to ensure that statutory duties in respect of their conservation had been discharged.

### **Policy considerations**

4.12.6 NPS EN-1 sets out policy for the historic environment at section 5.8. No issues of non-compliance were raised and so, whilst considered, this policy is not discussed in detail. NPS EN-2 raises no historic built environment issues that are particular to gas combustion plant. NPS EN-4 similarly raises nothing particular for the gas connection alignment, noting also that operation development there is not within this application.

## **Applicant's response**

- 4.12.7 It is broadly sufficient to note the Applicant's facilitation and conclusion of the SoCG with the Welsh Government and Cadw recorded above. In responding to an exploration of historic built environment issues at the 23 November 2016 Environmental ISH [REP6-009], the Applicant noted the absence of agreement on archaeological matters from Clwyd Powys Archaeological Trust. In doing so, it pointed out that the trust is not a statutory advisory body (and that those bodies were content) and that its main concerns related to the gas connection alignment, where operational development matters were subject to development approval and regulation through a grant of planning permission by WCBC and so were not matters of detail for this examination. R8 ensures the preparation of a pre-commencement Written Scheme of Investigation (WSI) and its approval by the relevant local planning authority before the commencement of the authorised development.

## **ExA conclusions**

- 4.12.8 I conclude that the Proposed Development as provided for in the recommended DCO represents good design in historic built environment terms. There will be no policy non-compliant adverse impacts on offsite historic built environment assets or their settings. Archaeological effects relating to unknown assets are appropriately controlled through the proposed WSI secured by R8. The Proposed Development meets the requirements of relevant NPS policy identified above.

## **4.13 DESIGN**

### **Issues**

- 4.13.1 Related to concerns about landscape and visual impacts and the historic built environment, a number of IPs were concerned about design overall:
- LC Johnson [RR-021] and Cllr Michael Morris [RR-025] were concerned about a lack of detailed information in the application on design.
  - Ms Elizabeth Cross [RR-009], Sesswick Community Council [RR-034], Mr John Graville [RR-015] and Mr Robert Eccleston [RR-032] were concerned about the indicative nature of the design information provided, including comments relating to the stack heights as estimates and the lack of details about the final landscaping measures and building finishes.
  - Mr Grant Scott [RR-011] felt that the application was a 'cut and paste job' from another scheme.

### **Policy considerations**

- 4.13.2 PA2008 s10(3)b requires the SoS to have regard to the desirability of achieving good design when considering whether the correct siting and



design decisions have been taken about energy infrastructure development. EN-2 paragraph 2.3.15 highlights the need to consider the principles established in NPS EN-1 section 4.5 in this regard.

- 4.13.3 NPS EN-1 advises in paragraph 4.5.4 that applicants *'should be able to demonstrate in their application documents how the design process was conducted and how the proposed design evolved'*. EN-1 acknowledges in paragraph 4.2.7 that *'it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail'*. In these circumstances paragraph 4.2.8 of NPS EN-1 requires applicants to assess the maximum extent (i.e. the realistic worst case) of the proposed development. This approach underpins the Rochdale envelope approach described at paragraph 4,2,19 above.

### **Applicant's response**

- 4.13.4 The Applicant points to Chapter 4 of the ES [APP-052] and the Design and Access Statement [APP-042] as explaining and justifying the design approach to the Proposed Development. As explained above, a Rochdale envelope approach has been pursued and assessment in the ES proceeds on that basis. This in turn means that a number of design outcomes are expressed in parametric terms and can be varied in the scheme as finally constructed. However, worst case adverse impacts have been assessed and the following mitigation is provided:
- DCO R2 provides for the submission and approval of a detailed final design, within the Rochdale envelope and in accordance with the design objectives for the application.
  - R3 provides similarly for a landscape and ecological mitigation submission.

### **ExA conclusions**

- 4.13.5 I have already provided a response to key design considerations arising from landscape and visual impact assessment and the historic built environment above. In broader terms, I agree with the Applicant that the Proposed Development has been designed in accordance with applicable policy and current best practice in the application of the Rochdale envelope.
- 4.13.6 Taking all relevant elements of this report into account, I have considered PA2008 s10(3)b and whether the SoS can be satisfied that the proposal represents good design. I am content that it does, on the basis that the mitigation set out in the recommended DCO is maintained.

## **4.14 BIODIVERSITY, ECOLOGY AND NATURAL ENVIRONMENT**

### **Issues**

- 4.14.1 NRW [RR-028] commenced the Examination concerned to be sure that the ES had adequately assessed impacts on biodiversity, ecology and

the natural environment. Amongst other matters, it sought an appropriate assessment following on from the HRA process, as it took the view that likely significant effects on European Sites could not be screened out on the basis of the application documents. This is a matter that is addressed fully in Chapter 5 below, which considers HRA considerations but which should be read alongside this section. In this respect, NRW confirmed that the local great crested newt (GCN) population is of national importance. The GCN is a European Protected Species.

4.14.2 However, clarification provided in NRW's response to my FWQs [REP1-015] identified that by the time the Examination was underway, it had no outstanding concerns about the effects of the Proposed Development in respect of protected sites or protected species. The status of biodiversity matters remained unchanged at DL6, when NRW and the Applicant concluded a SoCG which confirmed that there were no biodiversity matters outstanding or un-agreed [REP6-008]. That being said, the Illustrative Landscape and Ecological Mitigation Master Plan [APP-026 to 32] is a key document in this regard, as it identifies the physical and design measures to mitigate risks to GCN and enhance GCN habitat and led to the level of comfort expressed by NRW.

4.14.3 Natural England's (NEs) response to my FWQs [REP1-014] delegated comment on nationally protected species, and non-designated but valuable/sensitive habitat to NRW (which had raised none). It made clear that it also identified no likely significant effects on European Sites in England.

4.14.4 Local residents IPs raised concerns. Amongst these:

- Ms Joanna Roberts [RR-013] was concerned about the effects of the project via site drainage on the ecological characteristics of the River Dee catchment, on great crested newts and on the rigour and robustness of natural environment impact assessment generally.
- Mr Frank Lloyd [RR-010] was concerned that the application would harm wildlife.

These concerns were also raised orally at environmental issue specific hearings.

### **Policy considerations**

4.14.5 Section 4.3 of NPS EN-1 provides policy relevant to HRA. It is considered and responses to it are set out in Chapter 5 below.

4.14.6 Paragraph 5.3.3 of EN-1 states that an ES should clearly set out '*any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity*'.

- 4.14.7 Paragraph 5.3.4 of EN-1 also requires the applicant to *'show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests'*.
- 4.14.8 In England, the SoS is asked to implement the Government's Biodiversity Strategy: Working With the Grain of Nature, by seeking a *'a halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems'* (at paragraph 5.3.5).
- 4.14.9 Impacts on the hierarchy of designated sites, European and nationally protected species and ancient woodlands are a key concern of NPS EN-1 in section 5.3. However, no concerns were raised about the possibility of harm to any such sites or species, once the mitigation provided within the Proposed Development and the DCO had been taken into account and sites and species protection policies are not considered in detail here, there than with reference to the GCN.
- 4.14.10 NPS EN-2 contains no specific policy on natural environment impacts specific to gas generating stations.
- 4.14.11 NPS EN-4 section 2.21 seeks proposals for the reinstatement of land surface and avoidance or mitigation of natural environment harms in the consenting of a pipeline, but in this case, these are matters for the gas connection alignment planning permissions from WCBC.
- 4.14.12 At the Environmental ISH on 23 November 2016 I asked about the implications of the biodiversity duties under the Environment (Wales) Act 2016 relating to net gain in biodiversity. NRW and the Applicant confirmed that the SoS could be satisfied that there was likely to be a net increase in biodiversity [REP6-004 ][REP6-009].

### **Applicant's response**

- 4.14.13 In policy terms, the Applicant highlighted its view that ES Chapter 11 had adequately assessed and provided mitigation for any outstanding matters of natural environment concern. The GCN population had been responded to in the Illustrative Site Landscape and Ecological Mitigation Master Plan [APP-026 to 32]. As a European Protected Species, a licence for works affecting the GCN is likely to be required from NRW. The Applicant submitted a draft licence [APP-135] as part of the application. There would be no adverse effects as a consequence and this was agreed by WCBC, NRW and NE. There was no evidenced basis for the outstanding concerns.
- 4.14.14 Key mitigation measures provided for include:
- Horizontal directional drilling where the gas connection alignment crosses waterways to protect their ecological characteristics and safeguard the River Dee SSSI from what would amount to cumulative impacts due to that project and so not requiring to be directly secured in the DCO; and

- R3, requiring submission of a written landscaping and ecological mitigation scheme for the power station site substantially in accordance with the Illustrative Landscape and Ecological Mitigation Master Plan [APP-026 to 32] that will (amongst other things) provide for a significant enhancement of vegetation quality and ecological values, a drainage scheme and the creation of a substantial body of additional GCN habitat.

### **ExA conclusions**

4.14.15 Taking all relevant policy and evidence into account, I have considered whether the application as proposed leads to any breach of policy in respect of biodiversity, ecology or the natural environment. I am content that it does not, on the basis that the mitigation secured in the recommended DCO is provided and maintained. Of particular importance is the security provided for the written landscaping and ecological mitigation scheme for the power station site under R3, securing as it does, necessary GCN mitigation. I have reviewed the draft GCN Licence submitted with the application [APP-135]. Given the evidence before me from NRW, I observe that there is no reason why the SoS might consider that such a licence would not be granted.

## **4.15 AIR QUALITY AND EMISSIONS, DEBRIS AND WASTE**

### **Issues**

4.15.1 This section addresses emissions matters, including air quality, dust, debris and waste.

### ***Air quality***

4.15.2 There were no government or agency concerns expressed about the performance of the Proposed Development in air quality and emissions terms take on its own or cumulatively / in combination with other developments. Specifically, NRW was satisfied with the proposed air quality and emission performance of the Proposed Development and that that the Applicant had applied the correct assessment process. In this respect, NRW advised that detailed assessment of the effects of the Proposed Development would be required at the stage that an environmental permit was issued [REP1-015][REP2-004].

4.15.3 It is important to record that I asked NRW a number of key questions about the air quality and emissions performance of the Proposed Development in operation.

- NRW indicated that it was satisfied with the proposed approach to stack design for emissions control purposes. The specific height of a final stack or stacks would be specified in and controlled by an environmental permit (EP) (SWQ Q2.1.1)[REP4-004].
- There was no likelihood of air quality considerations driving a need for stack heights above the 50m maximum assessed in the ES (SWQ Q2.1.2)[REP4-004].

#### 4.15.4 Local resident IPs raised the following matters:

- Mr Dennis and Ms Angela Edwards [RR-007], Ms Elizabeth Cross [RR-009], Mr Andrew Imrie [RR-001], Mr Grant Scott [RR-011], Isycoed Community Council [RR-012], Mr John Smith and Ms Susan Davies [RR-014], Mr Frank Lloyd [RR-010] and Ms Barbara Pilson [RR-002] were concerned about the adverse effects of stack emissions on the local environment and local residents.
- Ms Kathleen Briggs [RR-019] was concerned that plume fall out in the local area would have adverse effects.
- Mr Charles Bellis [RR-004], LC Johnson [RR-021], Cllr Michael Morris [RR-025], Mr John Smith and Ms Susan Davies [RR-014] felt that the area was already suffering from air pollution and the Proposed Development would add to this.
- Ms Susan Harber [RR-037] was concerned about CO<sub>2</sub> being emitted, without any plans for carbon capture and storage (CCS).
- Mr Grant Scott [RR-011] felt that the power station was likely to generate more electricity than the Applicant had declared and that CCS measures would be necessary.
- Mr Chris Briggs [RR-005] questioned the technical air quality assessment that accompanied the submission in respect of start-up and shut-down emissions and the resulting implications for stack height calculations.

4.15.5 Substantial concerns in this regard were raised by Mr Chris Briggs [RR-005] throughout the Examination. Mr Briggs has an employment background in a field relevant to air quality, emissions and stack design. He was particularly concerned about the possible use of the generating station as a peaking plant. He highlighted that it was possible for an increased number of start-up and shut down processes to reduce the combustion efficiency of a plant. He was concerned that ground level concentrations of pollutants may not be as low as was suggested by the ES and may be harmful to human health. Having raised his concerns orally at the first environmental issue specific hearing in September 2016 [REP3-001], Mr Briggs then pursued data about the emissions performance of analogous combined cycle gas turbine generating stations [REP4-001]. He sought this information from NRW and EA in the form of a freedom of information (FoI) request, data from which was discussed originally in an anonymised form.

4.15.6 At the November environmental issue specific hearing, I requested that the source data be made available, on the basis that if it was capable of disclosure under FoI, then it could be placed on the public record. Analysis and response to it by Mr Briggs, NRW and the Applicant would be much clearer and fairer if it was presented in full as relating to known generating station. This request was responded to by Mr Briggs [AS-007] and by NRW [REP6-006], confirming the data as relating to Deeside Power Station.

4.15.7 The Applicant responded to the de-anonymised data on 4 January 2017 [REP7-009], as did NRW [REP7-004] and then Mr Briggs [REP7-

019]. In responding to the de-anonymised data, NRW made it clear that as the Applicant was under an obligation to apply the Best Available Technique Associated Emission Levels (BATAELs) under the Industrial Emissions Directive (IED), it would be held to best practice contemporary capabilities. The performance of an older plant such as Deeside Power Station would not be likely to be representative of the proposed plant's performance.

4.15.8 The data provided by Mr Briggs did not change the NRW response to the air quality implications of the application. NRW remained of the view that the Applicant had satisfactorily assessed the air quality and emissions and particular the combustion emissions implications of the application proposal. It remained of the view that detail stack design would be finalised within the framework of the EP process [REP7-004] and that there were no matters that required changes to the DCO.

4.15.9 On a separate matter, I drew the attention of parties to a judgment issued on 2 November 2016, in which the UK Government's Air Quality Plan of December 2015 was quashed (Client Earth v SoS EFRA, [2016] EWHC 2740 (Admin)) (the Client Earth judgment) in relation to establishing mechanisms for compliance with the Air Quality Directive (2008/50/EC) (AQD). An opportunity to comment on the implications (if any) of this judgement was provided in a R17 request made on 12 December 2016. NRW [REP7-004 at paragraph 2] was clear that because WIE is not subject to an air quality management zone, the Client Earth litigation had no implications for the SoS decision in this case.

### ***Dust***

4.15.10 Kelloggs [REP1-009] expressed concerns about construction and operational dust emissions on its nearby food manufacturing plant and the operation of its own surface water drainage facility. It was concerned about the prospect of contamination, and also of the water quality performance of its drainage facility and the possibility that contamination there might lead to an infringement of its own EP. NRW however was content that the potential for dust emissions contaminating Kelloggs plant to the extent that it was driven into breach of its own EP would be low and that a significant breach of the dust control measures applicable to the Proposed Development would have to have occurred to lead to such an outcome (SWQ Q2.1.3 [REP5-001]).

### ***Other debris and waste***

4.15.11 No issues relating to the management of other debris and waste were raised in representations.

### ***Policy considerations***

4.15.12 The Air Quality Directive (AQD) is applicable.

- 4.15.13 Paragraph 5.2.1 of EN-1 acknowledges that infrastructure development can have adverse effects on air quality. Paragraph 4.10.1 of EN-1 states that *'Issues relating to discharges or emissions from a proposed project which affect air quality, water quality, land quality and the marine environment, or which include noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes'*.
- 4.15.14 Section 4.13 of EN-1 advises how applicants should approach an assessment of how schemes could have an effect on the health and well-being of human beings for each element of the proposed development. Paragraph 4.13.1 of EN-1 provides that *'Energy production has the potential to impact on the health and wellbeing of the population'*, and advises that applicants should assess these effects for each element of the proposed project and identify measures to avoid, reduce or compensate for these impacts as appropriate.
- 4.15.15 Section 4.14 of EN-1 highlights the need for consideration of sources of emissions which could constitute a potential nuisance under Section 79(1) of the Environmental Protection Act 1990.
- 4.15.16 Section 2.5 of EN-2 confirms that the guidance contained in EN-1 should be followed in respect of emissions from fossil fuel generating stations.
- 4.15.17 Chapter 8: Air quality of the ES [APP-056] provides detailed information on European legislation and Welsh regulations on air quality and sets out the national standards for the protection of human health and vegetation.

### **Applicant's response**

- 4.15.18 Chapter 7: Traffic and transport of the ES [APP-055], Chapter 8: Air quality [APP-056], Chapter 13: Ground conditions [APP-061] and Chapter 15: Waste [APP-063] taken together assess the potential effects of the Proposed Development on matters related to emissions, air quality and waste. Chapter 17: Health, safety and security [APP-065] summarises the assessments relevant to health that have been undertaken in the ES, alongside the relevant safeguards addressed in the overall design and mitigation measures.

### ***Air quality***

- 4.15.19 ES Chapter 8 [APP-056] assessed the potential effects of the Proposed Development on ambient air quality. This included the effects of the following pollutants:
- oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) emitted from the gas turbines via the Stack during operation; and
  - NO<sub>x</sub> and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) associated with vehicle movements during construction, operation and decommissioning of the proposed development.

No relevant exceedances are predicted and so no air quality measures over and above those provided for in the DCO are necessary.

- 4.15.20 In relation to the Client Earth litigation, the Applicant noted the outcome of the case, but observed that as the Wrexham area is not an AQD non-compliant zone, the quashing of the UK Air Quality Plan of December 2015 had no bearing on the emissions of the Proposed Development or their regulation [REP7-009]. This position was agreed by NRW [REP7-004 at paragraph 2].

### ***Dust***

- 4.15.21 ES Chapter 8 [APP-056] assessed the potential effects of dust emitted from the site during construction and decommissioning of the Proposed Development.
- 4.15.22 In relation to Kelloggs dust concerns, the Applicant agreed to accept that Kelloggs balancing pond and car park should be responded to as highly sensitive receptors and amended the draft CEMP at revision 2 [REP4-018] to provide for this. On that basis, Kelloggs indicated that it was satisfied that their concern had been addressed [REP7-002].

### ***Other debris and waste***

- 4.15.23 Beyond positions as set out in the ES, the Applicant did not specifically respond in relation to other debris and waste.

### **ExA conclusions**

- 4.15.24 Whilst air quality was a matter of considerable local controversy due to concerns about combustion efficiency, emissions, stack(s) design and dispersal, NRW as the relevant regulator has been clear that it sees no reason why the Proposed Development should not be fully compliant with all relevant policies and standards. NRW has been clear that the EP process will enable the finalisation of stack design and the regulation of combustion and emissions to ensure that all relevant standards are met. In this respect, the important question for the SoS is whether the DCO provides an adequate design envelope for the finalisation of stack(s) design to meet NRW requirements.
- 4.15.25 I am satisfied that the AQD will be met by the proposed combustion emissions. I am also satisfied that relevant EN-1 and EN-2 policy will be met. I note that there are no instances of AQD non-compliance relevant to the Wrexham area and hence that there is no need to take any special or additional steps to respond to the Client Earth litigation.
- 4.15.26 The measures proposed to be added to the CEMP address Kelloggs concerns about the effects of construction dust on their business and the outfall quality of the surface water treatment facility. No additional measures are required to respond to Kelloggs concerns.



## **4.16 COMBINED HEAT AND POWER (CHP) READINESS**

### **Issues**

4.16.1 As a matter of policy, an application of this nature is required to be CHP ready.

4.16.2 A small number of local resident IPs raised concerns:

- Mr Stephen Whitby [RR-036], Mr Jonathon Young [RR-017] and Mr Grant Scott [RR-011] doubted the Applicant's sincere commitment to CHP readiness or that a CHP scheme would ever be developed.

### **Policy considerations**

4.16.3 Para. 4.6.6 of NPS EN-1 states that:

*'Under guidelines issued by DECC (then DTI) [now DBEIS] in 2006 any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the [Secretary of State's] consideration of the application ... The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008.'*

### **Applicant's response**

4.16.4 The Planning Statement submitted with the Application [APP-041] identifies that the potential for CHP was a criterion used in site selection. WIE was regarded as advantageous in offering a likely market for heat. The Applicant undertook an energy survey of 332 WIE occupiers to test the demand for heat. It has ensured that the Power Station Complex is 'CHP ready', by including a site for a future CHP facility, shown on the Works Plan [APP-008] as a Heat Network Interface Building (Numbered Work 1F) from which heat would be distributed in the event that a heat network is developed.

4.16.5 The development of CHP is subject to the market viability of heat distribution and sale proposals.

- R16 provides that CHP must be delivered if viable to do so in the future. CHP opportunities must be reviewed and if it is found to be viable then a heat network must be delivered.

### **ExA conclusions**

4.16.6 I am content that R16 as included in the draft DCO ensures that viability testing for CHP network delivery is required to be carried out. This is sufficient to ensure that the requirement of NPS EN-1 paragraph 4.4.6 is met.

## **4.17 WATER ENVIRONMENT**

### **Issues**

- 4.17.1 Water environment matters were raised by government agencies and utility providers. NRW [RR-028] commenced the examination with a concern that it should be demonstrated that the potential for flood risk associated with a small watercourse on the application site should be demonstrated to have been addressed. Dwr Cymru / Welsh Water [RR-008] sought further information about the volume and nature of foul discharges from the site to public sewers. It was concerned that there might not be sufficient capacity in the existing local public sewerage system to accommodate foul water discharges. WCBC did not express concerns on water environment matters.

### **Policy considerations**

- 4.17.2 The Water Framework Directive (WFD) is applicable to the Proposed Development.
- 4.17.3 Section 5.15 of EN-1 advises that, where effects on the water environment are likely, an assessment of the existing status of, and impacts of a development on water quality, water resources and physical characteristics of the water environment should be undertaken. Construction mitigation measures through a CEMP and operational mitigation through the design of (amongst other things) a drainage scheme are encouraged.
- 4.17.4 Section 5.7 requires applications to be accompanied by a Flood Risk Assessment (a Level 2 Flood Consequence Assessment in Wales).
- 4.17.5 Policy GDP1 of the Wrexham UDP safeguards water quality from pollution associated with new development. Policy EC14 protects controlled waters.

### **Applicant's response**

- 4.17.6 Chapter 14: The water environment of the ES [APP-062] assessed the potential effects of the Scheme on the water environment. The Application is accompanied by Level 2 Flood Consequence Assessment [APP-043] and a Foul and Surface Water Drainage Strategy (ES Appendix 14.3) [APP-148], which the Applicant considered to address the concerns raised.
- 4.17.7 Negotiations during the examination sought to satisfy Welsh Water / Dwr Cymru that foul water discharge could be appropriately managed pursuant to the discharge of R12 and within the framework provided by a trade effluent consent. Similarly, the development of a Statement of Common Ground with NRW sought to demonstrate that surface water quality, discharge and flood matters could be appropriately managed through the discharge of R12.

4.17.8 An updated Foul and Surface Water Strategy [REP4-017] was provided to document revisions offered as part of this process. This records a clearer commitment by the Applicant to modelling foul water outflows, to entering into a legal agreement and meeting any reinforcement / upgrade costs associated with any detriment to the network identified by modelling.

### **ExA conclusions**

4.17.9 In relation to foul water, Welsh Water / Dwr Cymru commenced the Examination with concerns about public sewer capacity and had requested that the Applicant deliver a further detailed study before the Examination concluded. However, by the end of the Examination that body was satisfied that there was no in-principle barrier to the development of an acceptable means of foul drainage. The Applicant having taken steps to demonstrate that sewer surcharge from surface water drainage could be minimised, it was content to rely on the preparation of a foul water drainage proposal for discharge under R12. Welsh Water / Dwr Cymru also agreed with the applicant that it would not require to adopt new foul water drainage assets pursuant to s104 of the Water Industry Act 1991, and that it was sufficient to manage the volume and characteristics of effluent discharge through a trade effluent consent.

4.17.10 The proposed surface water works are an important element of the Proposed Development. They will reduce the surface water outflow from the site to greenfield equivalent and ensure that water discharge to local water courses is of acceptable quality. The manage flood risk and, taken together, ensure compliance with the WFD. They form part of an integrated approach to the provision of landscape and natural environment mitigation and the provision of enhanced habitat for the great crested newt (GCN), a European Protected Species, a matter that I address in section 4.14 above. A Statement of Common Ground between NRQW and the Applicant [REP6-008 at section 5.17] records all outstanding matters about the design and operation of the surface water works raised by NRW as having been resolved to that body's satisfaction. Specifically, NRW no longer considered that additional flood evaluation or mitigation was required.

4.17.11 I note the construction and operational distinction between the foul water management measures and the surface water management measures proposed in the ES and documented in the Foul and Surface Water Drainage Strategy. Whilst there were no outstanding concerns from NRW about the standards to be met by this scheme at the end of the Examination, it did retain a concern that the design and delivery of the surface water drainage measures should not become confused with the foul water measures.

4.17.12 For these reasons and subject to further consideration in Chapter 8 (paragraph 8.5.2) below, I recommend that steps should be taken to clarify that approval of surface water mitigation design and delivery

can be distinct and separate from the approval of foul water system design and delivery.

- 4.17.13 Taking all of these matters together I am satisfied that all relevant concerns can be resolved within the framework provided by R12. Further, I note the positive contribution that the surface water drainage works will make, when taken together with ecological and landscape mitigation measures. I view these as meeting relevant policy and providing a positive benefit from the Proposed Development.

## **4.18 RISK AND HAZARD MANAGEMENT**

### **Issues**

- 4.18.1 This topic engages with a wide range of possible risks and hazards arising from the Proposed Development during construction, operation or decommissioning. It includes consideration of human health impacts and health and safety.
- 4.18.2 In response to my FWQs on public health matters [REP1-018], Public Health Wales raised no specific concerns. It deferred elements of relevant subject matters to Public Health England and remaining matters within the purview of the environmental permitting regime to NRW. Public Health England [RR-030] had stated that the application should be accompanied by an electric and magnetic field (EMF) assessment. However, despite requests, no more specific advice was received from Public Health England.
- 4.18.3 NRW did not raise any outstanding health concerns arising from matters subject to consent and regulation by the EP process, such as combustion processes, flue gas composition or stack design.
- 4.18.4 Local resident IPs identified a range of risk, hazard, health and safety concerns as follows:
- Mr Andrew Imrie [RR-001], Ms Marian Hughes [RR-022], Mr John Graville [RR-015] and Ms Kathleen Briggs [RR-019] were concerned about the possible risk of terrorist attacks, given that power stations are potential targets. Concerns were also raised about adverse of effects on local businesses and residents due to an incident such as a gas leak or explosion.
  - Ms Barbara Pilson [RR-002] was concerned about damage to property in the event of an explosion by whatever cause and whether an adequate risk assessment had been carried out.
  - Mr Chris Briggs [RR-005] was concerned about whether a blast radius had been defined and an evacuation plan put in place.
  - Ms Barbara Pilson [RR-002] and Mr Robert Eccleston [RR-032] objected on the basis of a lack of sufficient hazard assessment and the proximity of the pipeline to local houses and the primary school.

- Mr Dennis and Ms Angela Edwards [RR-007] objected to the development on the grounds of possible adverse effects on the health of local residents.

4.18.5 Matters in response to concerns relevant to combustion process, flue gas composition and stack design subject to consent and regulation through the environmental permitting (EP) process are addressed in section 4.13 above. However, the 'downstream' potential health effects of such matters are addressed here.

### **Policy considerations**

4.18.6 Paragraph 4.15.1 of EN-1 advises that '*Overall responsibility for security of the energy sector lies with [DBEIS]. It works closely with Government security agencies including the Centre for the Protection of National Infrastructure*'. Paragraph 4.15.2 of EN-1 confirms that it is Government policy to ensure, where possible, that proportionate protective security measures are designed into new infrastructure projects, implementation of which is now supported by measures advised by the Centre for the Protection of National Infrastructure (CPNI). The CDM Regulations 2015 apply; as do the Planning (Hazardous Substances) (Wales) Regulations 2015 and the COMAH Regulations 2015.

4.18.7 More specific advice on health and hazard matters is provided within Wales by Public Health Wales, although Public Health England retains sectoral responsibility for EMF policy and advice via its Centre for Radiation, Chemical and Environmental Hazards.

### **Applicant's response**

4.18.8 The Applicant's general response was to highlight its consideration of health and safety subject matters in Chapter 17 of the ES. The risk of terrorist attack would be addressed within the framework of advice provided by CPNI. Explosion risks arising from the gas connection alignment were low. Compliance with the CDM Regulations 2015, the Planning (Hazardous Substances) (Wales) Regulations 2015 and the COMAH Regulation require risk and hazard reduction measures. The effect of compliance with these regimes taken together would reduce risks and hazards to appropriate levels. Construction sites would be fenced and have a 24-hour security presence. The operational generating station would have a secure perimeter and 24-hour security. The Applicant advised that all relevant risks would be controlled and minimised.

4.18.9 Recognising that there was particular community concern about the potential hazard from the operation of the gas connection alignment, the Applicant called Mr Alan Brodie (an expert on gas and electrical connections and Chartered Mechanical Engineer with 25 years of energy industry experience) to provide evidence to the environmental issue specific hearing on 28 September 2016. The Applicant prefaced his evidence with the observation that matters arising from it were

only relevant in relation to cumulative impact, as the gas connection itself was subject to development approval and regulation under planning permissions granted by WCBC and by other mechanisms. However, it agreed that it was important to address the matters of widespread community concern that had been raised about the gas connection.

4.18.10 Mr Brodie's evidence was summarised by the Applicant as follows:

*'5.6 [Mr Brodie explained that] the design, construction and maintenance [of gas pipelines] is all regulated and controlled according to the Health and Safety Executive ("HSE") and Pipelines Safety Regulations 1996. He commented that the design of the Gas Connection was to standards recognised by National Grid. He explained that there were approximately 21,000 kilometres of high pressure pipelines in the UK and that it was a regulated process to install, commission and operate those pipelines. He noted it was a criminal offence for non-compliance of [sic] those regulations. He explained that the empirical evidence and experience demonstrated that if the process was followed then the risk of any incidents was very low. Consequently, the release of any gas from a pipeline and consequent effects of that are even lower. He explained that you are legally obliged to notify HSE of incidents that take place.*

*5.7 Mr Brodie explained that there was publicly available information on the HSE website that listed the number of incidents; these are dated up to 2013. Mr Brodie notes that in the last year 764 incidents were recorded and of those 764, 7 had the potential to cause an accident. Of those 7, 3 related to a gas pipeline and no accident resulted from those specific incidents.*

*5.8 In relation to records regarding loss of containment from a pipeline, Mr Brodie explained that public data records a 0.105% of product loss per kilometre. That equates to 1 incident per 1000 kilometres.*

*5.9 Mr Brodie summarised that the gas pipeline network exists all over the UK and is regulated by HSE. If it is operated to the required standards then the system is as safe as possible and the risk of an incident is as low as is reasonably practicable.' [REP3-014 at page 7]*

4.18.11 Turning to the initial concerns of Public Health England, the Applicant pointed out that all EMF sources would be either within a secure perimeter, or would be undergrounded and not exceed 132kV. As such, hazard would be minimised by design and there was no need to demonstrate compliance with the DECC (now DBEIS) voluntary code of practice: Demonstrating Compliance with EMF Public Exposure Guidelines (March 2012). There would be no public exposure to relevant EMF sources.

## **ExA conclusions**

- 4.18.12 The Applicant has provided a clear explanation of the means by which matters relevant to risk and hazard, including public health and health and safety will be addressed. I am grateful for the explanation of hazard considerations in the design and operation of gas pipelines, as whilst this is not a matter with a direct bearing on the SoS decision in this case because it relates to an already consented development (the gas connection alignment), it was clearly a matter of substantial community concern. However, it is clear from the evidence provided that all known hazard sources are proposed to be appropriately regulated and managed. None give rise to a breach of policy or to the need to amend the DCO beyond the form in which it is recommended.
- 4.18.13 Whilst it is a matter of regret that Public Health England did not participate in the Examination, given the secure and/or underground location of all relevant electrical plant and cables that could act as EMF sources, I have no grounds to consider that there are any outstanding concerns in relation to EMF issues.

## **4.19 NOISE AND VIBRATION**

### **Issues**

- 4.19.1 This topic engages with noise and vibration arising from construction, operation and decommissioning activities arising from the generating station. It only engages with the gas connection alignment and the electricity connection alignment to the extent necessary to address cumulative impact considerations.
- 4.19.2 No in principle concerns were raised about noise or vibration by government agencies, specifically NRW or by WCBC, on the basis that mitigation embedded in the draft DCO would be provided.
- 4.19.3 However, concerns about noise and vibration were raised as substantial concerns by a number of local resident and community IPs as follows:
- Ms Elizabeth Cross [RR-009], LC Johnson [RR-021], Mr John Smith and Ms Susan Davies [RR-014], Ms Kathleen Briggs [RR-019], Ms Marian Hughes [RR-022], Cllr Michael Morris [RR-025], Mr John Graville [RR-015], Ms Barbara Pilson [RR-002] and Mr Robert Eccleston [RR-032] considered that the local area is already subject to a noise pollution from the Wrexham Industrial Estate (WIE) and were concerned that not enough information had been submitted to demonstrate that the Proposed Development would not exacerbate noise impacts on local residents.
  - These concerns were shared by other IPs in the context of the close proximity of the Proposed Development to local residents, as highlighted by Mr Andrew Imrie [RR-001], Mr Clive Roberts [RR-006], Ms Joanna Roberts [RR-013], Isycoed Community

Council [RR-012] and Mr Dennis and Ms Angela Edwards [RR-007].

- Mr Grant Scott [RR-011] stated that the Proposed Development would change the nature of the WIE from a light industrial location which is currently low impact in terms of noise emissions into a location more appropriate for heavy industry.
- Mr Chris Briggs [RR-005] questioned the submitted noise assessment and the impact on local residents in the light of his concerns about current noise emissions and his dialogues with regulators about these.

4.19.4 It can be seen from this summary that a substantial concern arose from the interface between emissions arising from the Proposed Development with existing noise emissions from the WIE, which had become a matter of considerable concern to many.

4.19.5 Mr Briggs raised particularly strong concerns in this respect at the September and then again at the November environmental ISH. His concern was that the Applicant may not have assessed the noise performance of the Proposed Development with reference to an accurate WIE background noise assessment. This in his view was because the current WIE background levels were variable. They were contingent on particular operations and processes undertaken by individual existing manufacturing emitters and he suggested that issues at the Kelloggs plant were a potential source of concern. He also understood that formal action to manage and improve some existing noise emissions was under way. This gave rise to a further concern, to the extent that if WIE background levels fell between the point of assessment in the ES and the construction of the Proposed Development, noise emitted from the application site might not fall within the established background as suggested by the Applicant.

4.19.6 Mr Briggs sought information from NRW to substantiate his concerns. He documented the basis for these at D4 [REP4-001]. The matter then arose for substantive discussion at the environmental issue specific hearing on 23 November 2016. There, NRW responded to Mr Briggs concerns and in summary terms advised:

*'Specific matters have been raised by Chris Briggs at deadline 4 regarding the background noise on the industrial estate. NRW was asked to set out its position with regard to this matter:*

- *NRW confirmed that specific tonal noise issues have been investigated at the Kelloggs site.*
- *NRW confirmed that the specific decibel level of the noise was not inappropriate*
- *NRW confirmed that Kelloggs were currently implementing a number of control measures to address the matter.*
- *NRW re-affirmed its view that this should not affect the baseline considered within the EIS for the industrial estate as a whole.*
- *NRW confirmed that noise impacts would be considered within the EP determination process.'* [REP6-004]



4.19.7 It should be noted that in respect of the concerns raised by Mr Briggs, that what appeared to be WIE-sourced noise emissions were observed on land near Isycoed during an accompanied site inspection held on 22 November 2016 [EV-0256]. On this basis, I offered to undertake unaccompanied site inspections to observe the degree to which background acoustic impacts from WIE were apparent at residences in Isycoed and the degree to which they appeared to contain directional and tonal characteristics and to be variable. These observations were not undertaken using metering. However, they did provide an anecdotal basis supporting Mr Briggs' assertion that the WIE background was (taking other relevant factors such as wind speed and direction into account) somewhat variable, and on at least one occasion did contain observable directional and mechanical elements [EV-027].

4.19.8 That being said, assurances have been received from NRW [REP6-004] to the extent that:

- potential compliance issues arising from the Kelloggs plant should not have affected the basis on which the ES assessed the whole of WIE background; and
- operational noise emissions from the Proposed Development would be regulated within the environmental permitting (EP) framework, providing a means to address ongoing concerns, should any arise,

demonstrate that these are issues that can and will be managed on an ongoing basis via the EP regime.

### **Policy considerations**

4.19.9 Section 5.11 of NPS EN-1 notes that excessive noise can result in adverse effects on a range of receptors including human life, wildlife and biodiversity. Paragraph 5.11.9 of EN-1 states that development consent should not be granted unless significant adverse noise impacts on health and quality of life are avoided and other adverse impacts are mitigated and minimised. The paragraph also advises that the decision maker must be satisfied that, where possible, proposals contribute to improvements to health and quality of life through the effective management and control of noise.

4.19.10 Section 2.7 of NPS EN-2 observes that fossil fuel generating stations can generate noise.

4.19.11 Wrexham UDP policy GDP1 seeks to protect public amenity and safeguard the environment from adverse noise effects.

### **Applicant's response**

4.19.12 ES Chapter 9 (noise and vibration) [APP-057] sets out an assessment of the noise and vibration impacts of the Proposed Development. A key finding there is that the Proposed Development would be constructed and would operate in an acoustic context provided by the

WIE, which contains a wide range of existing industrial operations operating around the clock. WIE therefore provides an underlying background emissions level which would have the effect of masking noise from the Proposed Development.

- 4.19.13 Construction noise would be traffic and mobile plant related. It has been assessed as negligible, with the exception of a short period in which traffic noise on Bryn Lane might be significant.
- 4.19.14 Whilst the Proposed Development is quite close to noise-sensitive receptors, the separation distances are considered to be such that operational noise would not lead to relevant exceedances at any receptor. Inherent mitigation during operation would be provided by the enclosure of noise emitting plant within buildings. On this basis, operational noise and vibration effects at all relevant receptors are considered to not be significant.
- 4.19.15 The Applicant has proposed the following mitigation to address construction-related noise impacts:
- DCO R4 seeks nuisance management measures to be incorporated into the CEMP, to include noise and vibration limitation measures; and
  - R11 enables the control of construction hours to avoid sleep disturbance.

#### **ExA conclusions**

- 4.19.16 I am broadly content that the measures described in the ES and secured in the recommended DCO are sufficient to ensure compliance with the NPS and UDP policies identified in this section during the construction period. Construction noise effects are appropriately regulated in the CEMP (R4) and the control over construction hours (R11) will avoid sleep disturbance.
- 4.19.17 Turning to operational noise, I do note that this will fall within the EP framework provided by NRW. There have been concerns that the existing background noise from WIE has contained excessive emissions from some individual sources. However, I note that NRW has been taking action to secure compliance by these sources. I also note NRW's assurance that overall, such emissions should not have affected the emissions assumptions made by the Applicant and its conclusion that noise levels at receptors would be acceptable. I am persuaded that the EP regime will appropriately manage operational noise, that levels at relevant receptors (local dwellings) should not become non-compliant as a consequence of the development, but that action through the EP regime will be sufficient to address any exceedances that do occur.
- 4.19.18 On that basis, I am content that the DCO as recommended addresses noise and vibration issues to the extent required.

## **4.20 TRANSPORTATION AND TRAFFIC**

### **Issues**

- 4.20.1 The Welsh Government [RR-039] requested the submission of a transport assessment, Construction Transport Management Plan (CTMP) and a Traffic Management Plan (if required).
- 4.20.2 Royal Mail Group [RR-033] was concerned about traffic congestion and traffic delays caused by the Scheme in isolation and cumulatively.
- 4.20.3 Concerns about traffic and transportation were raised by local resident and community IPs as follows:
- Mr Andrew Imrie [RR-001] and Mr Chris Briggs [RR-005] expressed concern that the Proposed Development would generate additional vehicle movements on local roads.
  - Ms Marian Hughes [RR-022] suggested that there should be a requirement for the construction of an additional internal road from the B5130, which was not provided for in the Application.

### **Policy considerations**

- 4.20.4 Section 5.13 of EN-1 identifies the traffic and transport effects that can arise from energy infrastructure developments. Paragraph 5.13.3 of EN-1 calls for the assessment of transport and traffic conditions using methodologies agreed with the relevant national and local highways and transportation authorities and for the securing of mitigation to address adverse effects.

### **Applicant's response**

- 4.20.5 ES Chapter 7: Transport and Traffic [APP-055] assessed the transport and traffic effects arising from the Proposed Development during construction, operation and maintenance and decommissioning, alongside potential cumulative effects. It concludes in paragraphs 7.257 to 7.265 that transport and highway effects associated with construction would be temporary in nature and no more than slight adverse in their effect. Potential adverse construction effects would be limited to the construction route north of the Power Station Complex Site and to small number of dwellings on Bryn Lane to the south. Operational transport and traffic effects were assessed as neutral. Decommissioning effects would be equivalent to those of the construction phase. Cumulative effects would be temporary in nature and no more than slight adverse.
- 4.20.6 Necessary mitigation for the adverse effects identified is provided for in the draft Construction Traffic Management Plan (CTMP) [APP-114]
- R9 requires a final CTMP to be submitted and approved by WCBC;
  - R11 controls construction hours and so contributes to the regulation of construction traffic and transport effects; and

- R10 requires a travel plan for the operational phase, which enables predicted traffic effects to be managed.

### **ExA conclusions**

- 4.20.7 Whilst concerns were expressed in representations, I am broadly content that the Proposed Development does not give rise to substantial traffic and transportation impacts. It is easily accessible from within WSIE and WEI in turn has excellent road connections to the national highway network. It should also be recorded that in comparison with other issues raised in the Examination, the levels of concern raised about these issues were not high.
- 4.20.8 I am satisfied that the traffic and transportation assessment set out in the ES is sound. I am satisfied that the mitigation measures including a CTMP secured under R9, the regulation of construction hours under R11 and the preparation of an operational travel plan will mitigate the adverse effects of the Proposed Development to the extent required to meet NPS EN-1 paragraph 5.13.3. I do not accept that the concerns raised by Royal Mail or by Ms Hughes are sufficient to warrant any change to the Proposed Development. No changes to the DCO are required.

## **4.21 SOCIO-ECONOMIC EFFECTS**

### **Issues**

- 4.21.1 Concerns about socio-economic impacts were raised by local resident and community IPs as follows:
- Sesswick Community Council [RR-034] and Mr John Graville [RR-015] questioned the local economic value of temporary employment in the construction of the Proposed Development.
  - With Ms Marian Hughes [RR-022], these representors did not accept that the employment benefits of the Proposed Development would outweigh its adverse effects.
  - Mr Robert Eccleston [RR-032] was of the view that specialist labour required during construction would originate from outside the area and that economic benefits to the local area would be limited as a consequence.
  - Mr John Graville [RR-015] identified the possibility of adverse impact from the Proposed Development on tourism in Wrexham and the Cheshire border area.

### **Policy considerations**

- 4.21.2 Paragraph 3.2.1 of NPS EN-1 identifies the generally positive socio-economic effects derived from electricity generation to meet nationally identified energy needs at the national level. Paragraph 5.12.1 of EN-1 identifies that there may be local impacts that are both positive and adverse.

- 4.21.3 Paragraph 15.12.6 of NPS EN-1 requests the SoS to have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that he considers to be both relevant and important. Paragraph 15.12.7 emphasises that in view of the need for electricity generation infrastructure, *'limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence'*. Paragraph 15.12.8 asks the SoS to consider *'any relevant positive provisions the developer has made or is proposing to make to mitigate impacts'*.
- 4.21.4 Wrexham UDP policy PS1 promotes development within existing employment areas. UDP policy GDP1 seeks to *'secure the development of sustainable communities through the promotion of the economic, social and environmental well-being of the area'*. UDP policy E3 allocates land including the application site. WCBC views the Proposed Development as being supported by development plan policy in the context of appeal decisions, a matter that is reviewed in greater detail in Section 4.6 above and I rely on that analysis here.

### **Applicant's response**

- 4.21.5 The Applicant has assessed the socio-economic effects of the Proposed Development in ES Chapter 6 [APP-054]. It concludes from this assessment that the Proposed Development would provide a relatively modest addition to an already large and diverse industrial estate (WIE), which includes food manufacturing, general manufacturing, storage and distribution, offices, a civic amenity site, fuel storage depot and waste treatment facilities. On the basis of the evidence set out in the ES, the Applicant considers that the Scheme would bring net socio-economic benefits during construction and operation, without disruption to local tourism or other WIE occupiers.
- 4.21.6 In terms of tourism, the Applicant considered that the scope for adverse effects would be closely linked to the assessment of landscape and visual impacts on the broader viewshed. Having concluded that these impacts would be limited within the context established by the existing industrial estate, it concluded that there would be only the most limited adverse tourism impact.
- 4.21.7 The Applicant recognised the potential for the Proposed Development to give rise to economic benefits that could leak from the local area due to the tendency for projects of this nature to employ specialist labour. It proposes the following mitigation:
- R14 requires the preparation of a local economic benefit scheme to be agreed by WCBC, aiming to secure an increased local share of social and economic benefits from construction and operation.

### **ExA conclusions**

- 4.21.8 Whilst concerns were expressed in some representations, I am broadly content that the Proposed Development does not give rise to substantial adverse socio-economic impacts. I agree with the

Applicant that the national impacts are beneficial. I also agree with local IPs that the specialist nature of the construction and operation of a facility such as a generating station is such that substantial economic and employment benefits are likely to be distributed beyond the immediate local area unless special measures are taken to contain economic benefit within the local area.

- 4.21.9 In this respect, I am satisfied that best endeavours will be used to ensure that local social and economic benefit will be maximised. R14 secures the preparation of a local economic benefit scheme. Key elements of this include a mechanism for local tendering, a mechanism for utilising local people and businesses in construction and a strategy for local training provision to help meet these needs. This requirement demonstrates a significant commitment by the Applicant to ensure that benefits will be distributed to the local area where it is possible to achieve this.
- 4.21.10 With reference to my conclusion on landscape and visual impacts above, I agree with the Applicant's conclusion that any adverse impact on tourism in Wrexham and the Cheshire borders will be limited to negligible. This is on the basis that the immediate landscape and visual impacts of the Proposed Development will be absorbed into the context provided by WIE. It is most unlikely to have any influence decisions taken by visitors about whether or not to visit Wrexham or the Cheshire border area.
- 4.21.11 On this basis, I conclude that the Proposed Development will give rise to net positive social and economic effects at both the national and local levels and that NPS EN-1 and development plan policy will be met.

## **4.22 OTHER MATTERS**

- 4.22.1 I have given consideration to all other matters arising from the application documentation and raised in representations. I confirm that there are no other matters that appear to be important and relevant to the SoS decision that would indicate against the grant of development consent or would indicate a need to change the DCO.

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS**

### **5.1 INTRODUCTION**

- 5.1.1 The SoS is the competent authority for the purposes of the Habitats Directive<sup>18</sup> and the Habitats Regulations<sup>19</sup>. Regulation 61 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives.
- 5.1.2 Consent for the Proposed Development can only be granted if, having assessed the effects the project would have on European sites<sup>20</sup>, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 62 (considerations of overriding public interest).
- 5.1.3 Section 4.3 of NPS EN-1 describes the approach that should be taken by the decision-maker in relation to the Habitats Regulations. For the purposes of land-use planning, PPW states that potential Special Protection Areas (SPAs), candidate Special Areas of Conservation (SACs) and listed Ramsar sites should be afforded the same protection as classified SPAs and designated SACs.
- 5.1.4 I have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out his duties as the competent authority. I have sought evidence from the Applicant and the relevant IPs through written questions and ISHs. I issued a Report on the Implications for European Sites (RIES) [PD-016] on the 12 December 2016. The RIES compiled, documented and signposted HRA-relevant information provided within the DCO application and submitted during the Examination up to 2 December 2016. It was issued to ensure that I had correctly understood HRA-relevant factual information and the position of the various parties in relation to the effects of the Proposed Development on European Sites.

### **5.2 PROJECT LOCATION**

- 5.2.1 As described in Chapter 2 above, the Proposed Development comprises a CCGT power station with an electrical generation capacity of up to 299 MWe. The gas and electrical connections will be

---

<sup>18</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive').

<sup>19</sup> The Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations').

<sup>20</sup> The term European sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, Special Protection Areas (SPAs), potential SPAs and listed Ramsar sites.

consented separately, although the application does include provisions in relation to CA and TP for the proposed gas connection.

- 5.2.2 The Proposed Development is located to the north-east of Wrexham Industrial Estate. It is not located within or adjacent to any European sites. The gas connection however would cross the River Clwydog which is a tributary of the Afon Dyfrdwy a Llyn Tegid /River Dee and Bala Lake SAC. The Applicant has assumed that the River Clwydog is actively used by species which are designated features of the SAC [APP-046].
- 5.2.3 The Applicant identified potential effects from aerial emissions from the power station as being the most likely pathway for effects on European sites. They considered effects on European sites within 15km of the Application proposal. The distance of 15 km was chosen on the basis that the EA (2011) H1 Environmental Risk Assessment for Permits: Overview, H1 Annex F advises that effects on European Sites should be considered within 10km of installations or 15km of coal or oil fired power stations. Although the Application proposal is gas rather than coal or oil fired, the Applicant chose the 15km distance on a precautionary basis when considering the potential for likely significant effects [APP-046].

### **5.3 HRA IMPLICATIONS OF THE PROPOSED DEVELOPMENT**

- 5.3.1 The Applicant submitted a report with its DCO application to inform HRA under Regulation 5(2)g of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) entitled the 'No Significant Effects Report' ('the NSER') [APP-046]. The SoS for Communities and Local Government considered that the information provided in the NSER was adequate for acceptance of the application for Examination on 13 April 2016 [PD-002].
- 5.3.2 The project is not connected with or necessary to the management for nature conservation of the European Sites considered in the assessment.
- 5.3.3 As noted above, the Applicant scoped their assessment by identifying European Sites within 15km of the Application proposal [APP-046] on the grounds that they could be affected by aerial emissions from the Application proposal. The European Sites considered in the NSER are listed in Table 2.1 of the RIES [PD-016].
- 5.3.4 NRW confirmed in response to my FWQ 1.2.10 [PD-009] and SWQ 2.2.1[PD-011] that there were no other European Sites or site features in Wales that could be affected by the Application proposal [REP1-015 and REP4-004]. NE in their relevant representations [RR-027] and in response to my FWQ 1.2.11 and SWQ 2.2.1 confirmed that there were no other European Sites or features in England that could be affected by the Application proposal [REP2-003 and REP4-003].



5.3.5 NRW [RR-028], NE [RR-027] and WCBC [REP7-007] agreed with the Applicant that aerial emissions from the Application proposal were the most likely pathway for effects on European Sites. NRW [RR-028], and NE [RR-027] also agreed that they were satisfied with the Applicant's approach to assessing whether effects on European Sites were likely.

#### **5.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN-COMBINATION**

5.4.1 In its NSER [APP-046] the Applicant screened all of the European Sites identified within 15km of the Application proposal to establish if significant effects were likely. The sites considered were:

- Midlands Meres and Mosses Phase 1 Ramsar site;
- Midlands Meres and Mosses Phase 2 Ramsar site;
- Fenns, Whixall, Bettisfield, Wem and Cadney Mosses SAC;
- Johnstown Newt Sites SAC;
- Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC;
- Berwyn a Mynddoedd De Clwyd/Berwyn and South Clwyd Mountains SAC; and
- West Midlands Mosses SAC.

5.4.2 The designated features of the sites that were considered in the Applicant's assessment are listed in Table 2.1 of the RIES [PD-016].

5.4.3 The NSER considered effects from the Application proposal both alone and in-combination with other plans and projects. The plans and projects screened for in-combination effects included the gas and electrical connections for the Application proposal as well as a number of other plans or projects which are listed in Annex 1 of the RIES [PD-016]. No concerns were raised by IPs during the Examination about the scope of the Applicant's in-combination assessment.

5.4.4 The Applicant concluded that the Application proposal would not be likely to lead to significant effects on any European sites either alone or in combination with other plans or projects [APP-046]. This was mainly on the grounds that the Applicant's modelling of air quality effects [APP-056] predicted that the contribution from the Application proposal would be less than 1% of the critical load for the designated site features or their supporting habitat. The only exception to this was at one point on the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC. Even for this point the effect of nitrogen deposition is judged to be insignificant [APP-046].

5.4.5 The Applicant considered potential in-combination effects resulting from disturbance to species which are designated features of the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC from the installation and decommissioning of the gas pipeline. These were predicted to be insignificant because the pipeline would be installed using Horizontal Direct Drilling [APP-046], avoiding disturbance to 'functional habitat' (ie habitat used by species which are SAC designated features) by passing the pipeline beneath the relevant

aquatic habitat, ensuring no interaction. For all other potential effects the European sites are deemed to be too far from the Proposed Development for there to be any pathway for effects on site features.

- 5.4.6 Following the offer of a grid connection by underground cable to the Legacy substation, the Applicant submitted a revised grid connection statement [OD-006]. They also updated their cumulative effects assessment [REP2-015] to reflect the changes to the electrical connection. Under the original proposals work would have required on overhead lines which pass over the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC. Mitigation was proposed to avoid significant in-combination effects. As the underground connection would follow a different route there will no longer be any potential for effects on the SAC [REP2-015][APP-154][OD-006-7].
- 5.4.7 NRW originally advised that, following the approach to in-combination assessments taken by the Planning Inspectorate (sic) for the Hirwaun Power Station NSIP, a likely significant effect could not be excluded for aerial emissions and an appropriate assessment was therefore required [RR-028]. However in response to my FWQ 1.2.12 [PD-009], NRW confirmed that in their view the case falls within the scope of the H1 Environmental Risk Assessment Guidance. They agreed with the Applicant's position that the emissions from the stacks of the Proposed Development would be insignificant as they would be less than 1% of the critical load for the relevant site features both alone and in combination with other plans or projects [REP1-015].
- 5.4.8 With regard to the potential for in-combination effects on Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC from the changes to the electrical connection, NRW stated that the Applicant's conclusions were credible [REP4-004]. During the ISH of 23 November 2016, NRW confirmed that it had no outstanding concerns in relation to in-combination effects upon European Sites [REP6-004].
- 5.4.9 In their RR [RR-027] NE confirmed that they agreed with the Applicant's position that significant effects on European Sites were unlikely to occur as a result of aerial emissions, either alone or in combination with other plans or projects. They maintained this position throughout the Examination [REP1-014, REP2-003, REP4-003 and REP8-002].
- 5.4.10 Following the publication of the RIES [PD-016] the Applicant [REP7-08], NRW [REP7-004] and NE [REP8-002] confirmed that they had no comments on its content and were not seeking any amendments.

## **5.5 CONCLUSIONS**

- 5.5.1 Drawing the information provided in the application, with specific reference to the ES and the NSER together, and taking full account RRs, WRs, the responses to relevant written questions and oral questions at ISHs into account, I have summarised my understanding of HRA-relevant matters in the RIES [PD-016]. Consultation on the

RIES in turn raised no new relevant or important issues or concern that runs against the conclusion of no likely significant effects on European Sites as set out in the NSER. Having taken all of this information into account, I am clear that the SoS has sufficient information available to discharge his obligations under the Habitat Regulations. I am equally satisfied that the Proposed Development does not give rise to any likely significant effects on European Sites. I have reached these conclusions having applied the precautionary principle and on the basis that there is no reasonable remaining scientific doubt about them.

## **6 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **6.1 INTRODUCTION**

6.1.1 This Chapter provides a balanced evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 4 and 5 above. It applies relevant law and policy to the application in the context of the matrix of facts and issues set out in Chapter 4. Whilst HRA has been documented separately in Chapter 5, relevant facts and issues set out in that chapter are taken fully into account.

### **6.2 CONCLUSIONS ON PLANNING ISSUES**

6.2.1 In relation to the granting of development consent, I have reached a number of conclusions, as set out in the following paragraphs.

#### **Option development**

6.2.2 The Applicant's approach to option development complies with NPS policies EN-1 and EN-2.

#### **Siting and primary land requirement**

6.2.3 The applicants site selection and the extent of the land sought for the generating station development complies with NPS policies EN-1 and EN-2, with PPW, WSP and the development plan.

#### **The gas connection**

6.2.4 The development of the gas connection does not form part of the Application and planning permission has already been granted for it. The DCO does provide for the CA and TP of land required for the gas connection alignment and provide related powers for the undertaker to facilitate the development of the consented alignment. To the limited extent appropriate to consideration of land alone and powers alone and not dealing with development consent, the proposed gas connection alignment broadly complies with NPS policies EN-1 and EN-4. However, in respect to land at Pickhill Bridge Farm where a possible alternative alignment exists, there are matters relevant to CAP and TP that require further detailed consideration. These are reserved to Chapters 7 (CA and TP) and 8 (DCO below).

#### **The electricity connection**

6.2.5 Whilst I note considerable levels of community concern about it, the electricity connection does not form part of the Application and does not need to do so.

### **Other strategic projects and proposals**

- 6.2.6 The Proposed Development does not harm any other strategic projects or proposals. It gives rise to net economic benefit that weighs in its favour.

### **Landscape and visual impacts**

- 6.2.7 The Proposed Development will cause limited harm in landscape terms and some adverse visual impact at nearby visual receptors. However, the site has been well selected. It uses existing landscape features to significantly screen it and proposes to add to these substantially. The Applicant has sought to mitigate both landscape and visual harm and in doing so has complied with NPS Policies EN-1 and EN-2. The level of harm is anticipated by these policies and so it does not weigh against the development. It has devoted a substantial land area to landscape mitigation measures and the ecological benefits from these are material and weigh positively in the balance.

### **Historic environment**

- 6.2.8 The Proposed Development will not harm known historic assets and the site has been well selected to avoid harm. It may affect unknown (archaeological) assets. However, the Applicant has sought to mitigate this effect and in doing so has complied with NPS Policies EN-1 and EN-2. This consideration is neutral.

### **Design**

- 6.2.9 The Proposed Development represents good design, providing overall a balanced and sustainable design response to its site and setting. This consideration is neutral.

### **Biodiversity, ecology and natural environment (including HRA)**

- 6.2.10 The Proposed Development will cause limited harm in biodiversity, ecology and natural environment terms and avoids harm to European Sites. It will affect a European Protected Species, the great crested newt. However, the Applicant has sought to mitigate this harm and in doing so has complied with NPS Policies EN-1 and EN-2. In tandem with the proposed landscape mitigation, the net effect of very substantial conjoined landscape and ecological measures is positive.

### **Air quality and emissions, debris and waste**

- 6.2.11 The construction process will emit plant exhaust and dust. Other construction wastes will arise. However, measures to control the adverse effects of these emissions are in place and secured.
- 6.2.12 The operational Application Proposal will emit CO<sub>2</sub>. However, this is in a context where NPS EN-1 identifies an ongoing need for fossil fuel plant.

### **Combined heat and power (CHP) readiness**

- 6.2.13 The Application Proposal meets NPS EN-2 requirements to be CHP ready. This weighs positively in the balance.

### **Water environment**

- 6.2.14 The Proposed Development can be supplied with water and connected to foul drainage. Site surface water drainage is proposed to be managed in an innovative manner that will augment natural environment mitigation. NPS EN-1 will be met. This weighs positively in the balance.

### **Risk and hazard management**

- 6.2.15 Risks and hazards will be appropriately managed and the Application Proposal complies with NPS EN-1 and EN-2. This aspect is neutral.

### **Noise and vibration**

- 6.2.16 Noise and vibration will be appropriately managed and the Application Proposal complies with NPS EN-1 and EN-2. This aspect is neutral.

### **Transportation and traffic**

- 6.2.17 There will be minor adverse traffic impacts largely associated with construction. However these have been mitigated to the extent possible and are compliant with NPS EN-1. This aspect is minor negative.

### **Socio-economic effects**

- 6.2.18 The Proposed Development will generate social and economic benefits in the form of employment and expenditure in the local, regional and national economies. Concerns were expressed in the local community about the adverse effects of the proposed development but these do not lead to a breach of NPS EN-1 or development plan policy or affect a net beneficial assessment at both the national and local levels.

### **Other matters**

- 6.2.19 There are no other matters important and relevant to the outcome that require to be taken into account by the SoS in considering the planning balance.

## **6.3 THE PLANNING BALANCE**

- 6.3.1 There are no adverse impacts of sufficient weight to argue against the DCO being made. The Proposed Development would result in less than significant harm to interests that in turn have been mitigated as required by NPS policy. I conclude that the limited harm done is outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the

application as summarised above. I further conclude that there is no breach of NPS policy overall.

- 6.3.2 For the reasons set out in the preceding chapters and summarised above, I conclude that the Proposed Development is acceptable in principle in planning terms. I carry this conclusion forward to my consideration of CA and TP proposals and objections to these in Chapter 7 below, noting also that my reasoning above identifies a basis for a small number of changes to the DCO, documented in Chapter 8 below.

## **7 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **7.1 INTRODUCTION**

7.1.1 The application subject to examination included proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights over land. This chapter records the examination of those proposals and related issues.

### **7.2 THE REQUIREMENTS OF THE PLANNING ACT 2008**

7.2.1 CA powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008, together with relevant guidance in "*Guidance Related to Procedures for the Compulsory Acquisition of Land*", DCLG, September 2013 (the DCLG CA Guidance) are met.

7.2.2 Section 122 (2) requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>21</sup>

7.2.3 Section 122(3) requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the Proposed Development and there must be consistency and coherency in the decision-making process about the request for CA powers and for the Proposed Development as a whole.

7.2.4 Section 123 requires that one of three procedural conditions in subsections 2 - 4 must be met by the application proposal, namely:

- *(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.*
- *(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.*
- *(4) The condition is that the prescribed procedure has been followed in relation to the land.*

It should be stated from the outset that I am satisfied that the condition in sub-section (2) is met.

---

<sup>21</sup> DCLG CA Guidance



7.2.5 A number of general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

These matters were tested in the Examination and are reported on further below.

7.2.6 Further to Part 1 of Schedule 5 to PA2008 at Paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.

7.2.7 I take all relevant legislation and guidance into account in my reasoning below and relevant conclusions are drawn at the end of this Chapter.

### **7.3 THE REQUEST FOR COMPULSORY ACQUISITION (CA) AND TEMPORARY POSSESSION (TP) POWERS**

7.3.1 The application draft Development Consent Order (DCO) [APP-033] and all subsequent versions submitted by the Applicant included provisions intended to authorise CA of both land and rights. Powers for the temporary possession TP of land were also sought.

7.3.2 On this basis, the application was accompanied by a Book of Reference (BoR) [APP-037], Land Plans [APP-007], a Statement of Reasons (SoR) [APP-035] and a Funding Statement (FS) [APP-036]. Taken together, these documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis under which compensation would be funded. As is normal, the Examination and due diligence processes led to changes to some of this documentation. By the close of the Examination, the most up-to-date versions were as follows:

- BoR Revision 3: Deadline 8 (12 January 2017) [REP8-007];
- Land Plans Revision 5: Deadline 9 (17 January 2017) [REP9-006];

- the SoR [APP-035] remained as submitted with the application, but relevant matters were addressed in later evidence which is recorded individually below; and
- the FS [APP-036] also remained as submitted with the application, but relevant matters were addressed in later evidence which is recorded individually below.

These documents taken together form the basis of the analysis in this Chapter. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above. It should be particularly noted that all Land Plan plot references employed in this chapter are correct as per the most recently submitted Land Plans Revision 5: Deadline 9 (17 January 2017) [REP9-006].

7.3.3 Land over which CA and / or TP powers are sought is referred to in this Chapter as the Order land.

## **7.4 THE PURPOSES FOR WHICH THE POWERS ARE REQUIRED**

7.4.1 The purposes for which the CA and TP powers are required are set out in the BoR [REP8-007] and SoR [APP-035], as augmented by relevant additional evidence discussed below.

7.4.2 The combination of CA and TP powers are sought to support two main development outcomes:

- for the primary development and use of a generating station; and
- for the formation of a land corridor for a gas connection alignment, between the generating station and the existing gas transmission network at Maelor Gasworks and which is necessary to enable gas to be supplied to the generating station. As is recorded in paragraphs 2.1.6 and 2.4.4 above, planning permission for the gas connection has already been granted by Wrexham County Borough Council (WCBC).

The electricity connection is proposed to be installed in an underground alignment within highways using existing permitted development and other relevant statutory rights benefiting the electricity distribution network operator. No CA and or TP powers are sought for this connection.

7.4.3 In general terms, CA is sought for land that would be required permanently - for construction, operation and decommissioning of the main application proposal, the generating station and for a new above ground installation (AGI) at Maelor Gasworks, from which gas would be directed to the proposed gas connection alignment. CA of rights only is sought for the proposed gas connection alignment and for access to it and to the generating station site. TP is sought for time-limited processes associated with construction, including lay down, materials and soil storage and construction access, both for the generating station and the gas connection alignment.

7.4.4 It must be noted that the draft DCO includes CA and TP powers relevant to the construction of the proposed gas connection alignment. A DCO may not provide consent for associated development relating to a generating station in Wales. For this reason, I asked the application and IPs for views on the legal basis under which a DCO might appropriately include CA and TP powers for elements which might be associated development, where the associated development itself was not provided for.

## **7.5 EXAMINING THE CASE FOR CA AND TP**

7.5.1 My examination of the application included consideration of all submitted written material relevant to CA and TP. I asked written questions of the applicant about the justification for the powers sought, I held Compulsory Acquisition Hearings (CAHs) and I requested inspections of land subject to CA and TP requests. I describe these processes below.

### **Written process**

7.5.2 My first written questions (FWQs) [PD-009] included questions relevant to CA and TP, which can be summarised as addressing the following issues:

- Whether any National Trust land is engaged?
- Whether PA2008 ss131 or 132 in respect of commons or open spaces etc is engaged?
- Given that the application relates to land in Wales and that there may be Crown Land vested in the Crown Estate and / or in the Welsh Ministers, which Crown bodies are relevant and from which is consent still required pursuant to PA2008 s135?
- The state of play on objections.
- Questions about financial security for compensation.

7.5.3 My second written questions (SWQs) [PD-011] requested the applicant to provide an updated record of progress on all outstanding CA and TP matters.

7.5.4 I also made requests for further information under Rule 17 of the EPR (R17Qs), seeking the following information relevant to CA and TP:

- updated funding evidence;
- updated Land Plans taking account of in-examination changes and due diligence outcomes;
- statutory undertaker and land issues relevant to Maelor Gasworks; and
- clarifying whether APs represented by Rostons have outstanding objections to CA and or TP (R17Qs 12 December 2016) [PD-014];
- further statutory undertaker and land issues relevant to Maelor Gasworks;
- the effect of proposed CA provisions on a consented solar farm; and

- matters relevant to Crown interests and consent (R17Qs 9 January 2017) [PD-018].

## Hearings

7.5.5 I provided CAHs at which I asked oral questions of the applicant and affected persons (APs).

- The first CAH was held on 29 September 2016 [EV-013][EV-023 to 24].
- The second CAH was held on 24 November 2016 [EV-025][EV-031].

These hearings provided an opportunity to be heard for any person objecting to the grant of CA or TP powers.

7.5.6 My oral questions sought information about:

- matters not clear from WRs and question responses;
- drafting queries on relevant Articles in the draft DCO;
- powers to override easements and other rights;
- provisions to secure mitigation land;
- the need for and approach to temporary possession rights and the final extent of temporary as opposed to permanent rights;
- funding and guarantees in respect of payment of compensation;
- The Crown's acceptance of provisions in the draft DCO;
- Human Rights Act tests;
- progress on negotiations with affected landowners;
- the need to acquire rights and consideration of alternatives;
- the Book of Reference;
- special category land;
- protective provisions in relation to statutory undertakers and others; and
- the basis for a compelling case in the public interest.

7.5.7 I provided APs and their representatives with an opportunity to comment on the process and progress of negotiations and whether they had any concerns with respect to the rights sought. I provided statutory undertakers with an opportunity to comment on rights sought and on the provisions in the draft DCO. Although they were neither an AP or a statutory undertaker, I afforded an equivalent opportunity to be heard to the prospective operator of the Maelor solar farm - Earthworm Energy (Earthworm). I took this step because it appeared possible that the exercise of proposed CA and TP powers in the solar farm area had the potential to significantly disrupt construction and or operation of what was another generating station, albeit with a small installed capacity. These opportunities included the opportunity to be heard at one of the two CAHs ([EV-013][EV-023 to 24]) ([EV-025][EV-031]).

## Inspections

7.5.8 I conducted accompanied site inspections (ASIs) at which I entered onto private land with consent, to inspect the proposed generating station site and the land sought for the proposed gas connection alignment. Interested parties (IPs) and APs were provided with an opportunity to nominate land for inclusion in these inspections.

7.5.9 The first ASI took place on 27 September 2016 [EV-013].

- Its purpose in part was to inspect land subject to CA and TP proposals associated with the construction and operation of the generating station. However, significant elements of the proposed gas connection alignment were also inspected.
- Plots PS1 (permanent acquisition for the generating station site), PS1A and B (the temporary construction and laydown areas) and AR1 (the access rights proposal to form the main highway entrance to the application site) were viewed, as was the commencement of the proposed gas connection alignment in plots GC1 and GC2 (permanent rights). It should be noted that access to this land was provided by the applicant and there are no objections relating to the CA or TP powers sought in relation to it.
- Having left the main site to view surrounding land and features in Ridleywood, Isycoed and Bowling Bank, the first ASI then returned with the consent of Mr Robert Eccleston [RR-032] to the first land affected by the gas connection alignment beyond the main generating station site, Plot GC3 (CA of permanent rights) and GC3A (TP for construction). This land is subject to an objection to CA and TP. From this land, views through the hedgeline were obtained to the onwards alignment proposal Plot GC4 (CA of permanent rights) and GC4A, B, C and D (TP for construction), but this land was not entered.
- Having undertaken further inspections of the application proposal setting, the ASI then returned to Maelor with the consent of Wales and West Utilities (WWU) to view the proposed access to Maelor Gasworks (MGAR1 - 4) (permanent access rights), the proposed AGI site (AGI1) (permanent acquisition) and the termination of the proposed gas connection alignment corridor. Plots SAT1-7 and GC14 - 17A (providing both rights acquisition and temporary possession for construction) were viewed from the adjacent public right of way.
- Accompanied by a representative of Earthworm, the ASI then entered Pickhill Bridge Farm plots GC12, 12A and 12B to view land in the ownership of Mr Gerard Owen, where the gas connection alignment was proposed to cross the consented solar farm. Views to the north east of the proposed river crossing location (GC11) towards Bowling Bank were obtained.

7.5.10 The second ASI took place on 22 November 2016 [EV-025].

- Its purpose was to inspect agricultural land in the ownership of APs represented by Rostons, affected by proposals relating to the gas connection alignment. It commenced at Cae Brynner Farm, Isycoed, with the permission of the Edwards family (Plots GC5, GC5A-E and GC6). It moved to Oak Road to view the Ellis land (GC7, GC7A-D, GC8, GC8A, GC9 and GC9A-C). Having viewed this land from the adjacent Edwards land and from the road (OR1-2), I was content that it was not necessary to enter onto the land itself as the proposed alignment could easily be discerned. The ASI concluded by viewing the Done land adjacent to Lower Oak Farm, Bowling Bank (GC10, GC10A-C) with their permission. The proposed gas connection alignment was walked and at its southernmost extent the proposed river crossing (GC11) was observed, enabling a visual connection to be made with land at Pickhill Bridge Farm inspected on 27 September 2016.

7.5.11 Taken together, the two ASIs provided me with an understanding of the location and condition of all of the plots proposed to be subject to CA and TP powers.

## **7.6 CONSIDERATION OF CA AND TP ISSUES**

7.6.1 This section sets out the Applicant's general case for CA and TP and responses from objectors to it. It then records the consideration of all remaining aspects of the CA and TP cases, including the consideration of individual objections and of land in respect of which there was no formal outstanding objection to CA and TP.

7.6.2 Finally, the section considers a range of technical matters relevant to CA, including the availability and adequacy of funds, Crown land and consent, statutory undertakers and protective provisions.

### **THE APPLICANT'S CASE**

7.6.3 The Applicant's general case for CA and TP is based on the land requirement for the construction and operation of the generating station, together with land required for the construction and operation of a gas connection alignment between the gas transmission system at Maelor Gasworks and the generating station. The gas connection alignment as proposed benefits from a grant of planning permission.

### **Alternatives**

7.6.4 The DCLG CA Guidance requires (at paragraph 20) that:

*'The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...'*

7.6.5 The Applicant's approach to the consideration of alternatives for the generating station site is set out in Chapter 4 above. Summarising

from that explanation, the Applicant was clear that a range of potential generating station locations was reviewed and the application site was chosen because it enabled the development of combined cycle gas turbine plant with access to the gas transmission network and in a location where electricity could be exported to the distribution network, on land where there was a planning history and local policy support for an industrial scale of development.

7.6.6 A detailed explanation of the site alternatives evaluation for the gas connection alignment was provided by the Applicant in its summary of oral submissions to the CAH on 29 September 2016 [REP3-017 Appendix 2]. In summary, that evidence addressed the selection of the alignment to meet the following criteria:

- route efficiency (minimisation of length);
- route efficiency (minimisation of cost and the adoption of appropriate technical specifications);
- avoidance of residential receptors;
- avoidance of developed industrial land in WIE; and
- avoidance of impact on natural and historic environment assets.

A thorough evaluation of possible gas connection alignments had been undertaken, from which it was clear to the Applicant that the selected alignment was most feasible (and realistically the only feasible) alignment in which a gas connection could be provided between the generating station site and Maelor Gasworks.

#### **The scale of the proposed development, micro-siting and the minimisation of land-take**

7.6.7 The Applicant explained that the land required for the construction of the generating station has been identified precisely. It was committed to a minimisation of land-take for the CA of rights within the proposed gas connection alignment by ensuring that land only required for construction processes but not subject to an operational requirement is subject to TP powers only.

7.6.8 Within the main generating station and AGI sites, this approach is unlikely to affect the distribution of land in respect of which CA of the freehold is sought and where rights only or TP is required. However, in the gas connection alignment, (the land shown in blue on the Land Plans) for the acquisition of rights represents a maximum extent land requirement. It is anticipated that once pipeline micro-siting has been finalised, it will be possible to CA rights over a narrower corridor, within but extending to less land than that shown on the Land Plans.

7.6.9 The Applicant is seeking agreement to acquire land and rights where possible.

#### **OBJECTORS' GENERAL CASE**

7.6.10 Objectors' general case against CA and TP was that the proposed generating station was wrongly sited, or could have been sited

elsewhere. These concerns ranged from the strategic: that there was no need for a generating station in the Wrexham area, to the more specific, that the selected site was inappropriate for a development of this type or that an alternative site could have been identified at or closer to Maelor Gasworks, which would have reduced the length and impacts of the proposed gas connection alignment and hence the extent and effects of CA and TP. Concerns were also expressed that too much land was sought for the generating station, on the basis that the proposed installed capacity of the generating station was now much smaller than that of the original proposal and hence that less land would be required.

- 7.6.11 In large part, these concerns relate to land use issues which are addressed in Chapter 4 (sections 4.5 to 4.8) above, or to the specific effects of CA or TP on individuals land, addressed in detailed terms below.

### **EXA CONCLUSION**

- 7.6.12 I set out my general conclusions on the CA and TP case here, although it should be recorded that these conclusions have been formed and fully take into account my considerations arising from individual detailed cases and technical considerations set out further below from paragraph 7.6.16.
- 7.6.13 For reasons broadly articulated in Chapter 4 above, I am satisfied that the Applicant has undertaken a thorough evaluation of siting options for the Proposed Development. This has included a thorough evaluation of alternatives, from which I am clear that, given the basic suitability of the WIE to host a development of this type in land use and policy terms, and due to the combination of the nearby availability of a gas grid connection and distribution network capacity for electricity export, the application site has been appropriately selected. Specifically, I make clear for CA purposes that I do not see a basis for an alternative generating station site within the WIE. Nor do I see one at or close to Maelor Gasworks, in what is currently open countryside outside the WIE, lacking as it does either current or emerging policy support or a planning history supportive of such a development.
- 7.6.14 I have reviewed the proposed use of land on the generating station site and noted the needs for plant and mitigation measures provide a clear explanation of the need for all the land proposed to be subject to permanent acquisition. A basis for the extent of land required temporarily to support the construction process and for ongoing rights has also been explained. I am satisfied that land subject to CA and TP for the proposed generation station has been minimised and that all reasonable alternatives to CA have been explored. I agree that the land sought for the generating station is land that is required for the purposes of s122 (2) (a) PA2008 and that, subject to and taking account of my detailed reasoning on individual plots below, it meets the test set out in that section.



7.6.15 I have also considered the land subject to CA and TP proposals for the gas connection alignment. Here, given that I agree that the selected generating station site is appropriate and particularly that alternative sites closer to Maelor Gasworks are not, there are then a limited range of gas connection alignment options that can be pursued. I agree that the chosen connection represents the best outcome from a thorough evaluation of alternatives and that it minimises land-take and adverse social, economic and environmental effects. I note that planning permission has already been granted for the construction of the gas connection alignment. I agree that the land sought for the gas connection alignment is land that is required for the purposes of s122 (2) (b) PA2008 and that, subject to and taking account of my detailed reasoning on individual plots below, it meets the test set out in that section.

### **PROGRESS ON CA AND TP PROPOSALS**

7.6.16 In my FWQs at section 1.4, I established a process for logging outstanding objections relevant to CA and TP [PD-009]. The Applicant's response to my FWQs [REP1-032-33] and its later Objection Schedule [REP4-010] identified that there were seven APs viewed as having outstanding objections to CA and / or TP. These were:

- WWU;
- National Grid;
- Dwr Cymru / Welsh Water;
- Fibrespeed Ltd.;
- SP Manweb plc / Scottish Power Energy Networks (SPEN);
- Isycoed Community Council; and
- Mr Robert Eccleston.

Progress on each of these objections through the Examination is recorded below.

7.6.17 Additionally, whilst not formal objections to CA and / or TP, issues with a bearing on CA and TP provisions in the DCO arose during examination in relation to:

- land interests of Messrs Edwards, Ellis and Done, represented by land agents Rostons;
- land at Pickhill Bridge Farm, the land interests of the Crown and Mr Gerard Owen; and
- the effect of the land proposals on a consented solar farm at Pickhill Bridge Farm, the land interests of Mr Gerard Owen and a project under development by Earthworm Energy Ltd.

These are also reported upon below.

## **WWU**

**Location:** Maelor Gasworks

### **Interests**

**Freehold owner:** in respect of plots AGI1, SAT5, SAT6 and SAT7.

**Rights:** in respect of plots AR1, MGAR1, MGAR2, MGAR3 and MGAR4; the siting of and access to gas distribution equipment and apparatus; access to adjoining land and gas distribution facility.

**Status:** statutory undertaker objector.

- 7.6.18 WWU [RR-038] objected in respect of the CA of land, rights and TP at and surrounding the Maelor Gasworks, and subject to negotiations on protective provisions. It did not object in principle: however, it was key to its ongoing operations that the CA and TP proposals did not prejudice its ability to provide a secure perimeter for its existing gasworks site.
- 7.6.19 WWU confirmed at DL8 that whilst a final design review for its critical national infrastructure (CNI) secure perimeter was not yet complete, it was content that this would not impinge on the intended Wrexham Power Lease Area (the lease area) or AGI compound footprint, as shown on the 'WWU PSUP Exclusion Zone' plan annexed to its WR [REP8-003]. It identified a 4m strip adjacent to the boundary between the lease area and the existing Maelor Gasworks perimeter, where measures to enable the operation of perimeter surveillance equipment may be required. On the basis that the Applicant was prepared to agree a commercial lease and protective provisions, WWU would withdraw its objection to CA and TP.
- 7.6.20 The Applicant provided an updated Land Plan [REP9-006] in which the land subject to CA for the AGI is identical to the lease area shown on 'WWU PSUP Exclusion Zone' plan [REP8-003]. The Applicant agreed to amend the definition of "specified work" in the preferred draft DCO submitted for D9 [REP9-007] to provide for the 4m surveillance strip within the lease area. However, WWU did not confirm its agreement to that change. Nor did it prove possible to agree the final form of protective provisions benefitting WWU before the end of the examination. It follows that this is an outstanding objection by a statutory undertaker benefitting from the protections accorded by ss127 and 128 PA2008. Whilst there is every indication that negotiations could be brought to an agreed position before the end of the decision-making period, if the objection remains unwithdrawn then the requirements of s128(2) and (3) could apply.
- 7.6.21 For these reasons, the SoS may wish to consider seeking a final form of protective provisions in Schedule 9 Part 6 of the DCO from the Applicant and seek views from WWU on the drafting of these, together with the drafting of the definition of "specified work" in Art 2(1), before deciding the application. It would equally be valuable for the Applicant and WWU to confirm to the SoS that the outstanding objection has been withdrawn.

## **National Grid**

**Location:** Maelor Gasworks

### **Interests**

**Freehold owner:** (Birch Sites) in respect of plots MGAR1, MGAR2, MGAR3 and MGAR4.

**Rights:** (National Grid Gas plc) sought by Applicant over plots MGAR1, GC17, GC17A; the siting of gas distribution equipment and apparatus. (National Grid Gas plc) in respect of plots SAT5, SAT6, SAT7, MGAR1, MGAR2, MGAR3, MGAR4; access to adjoining land and gas distribution facility.

(National Grid Gas plc) in respect of plot AGI1.

(National Grid Property Holdings Limited) in respect of plots SA5, SAT6, MGAR1, MGAR2, MGAR3 and MGAR4; benefit of restrictive covenants.

**Status:** statutory undertaker objector (withdrawn).

- 7.6.22 National Grid (on behalf of Birch Sites Limited, National Grid Gas Plc and National Grid Property Holdings Ltd.) [RR-026] made representations in respect of the CA of land, rights and TP at Maelor Gasworks, and sought to negotiate protective provisions.
- 7.6.23 National Grid wrote to the applicant on 4 January 2017 [REP7-003] to agree the form of protective provisions included in the draft DCO. It wrote again on 11 January 2017 [REP8-001] to further confirm its agreement to both the form of protective provisions for inclusion in the preferred draft DCO [REP9-007] and to a confidential side agreement in relation to the protection of apparatus. That correspondence states that '*National Grid can confirm that it is satisfied that its interests in the Order land and apparatus are adequately protected and that it wishes to withdraw its representations in respect of the Application*'.
- 7.6.24 To the extent that this was an objection to which ss 127 and 128 PA2008 were relevant, I am content that this objection is withdrawn. The remaining circumstances do not raise any issues that indicate against the approval of the CA provisions sought by the Applicant. I am content that there are no further outstanding concerns in relation to the interests of National Grid as recorded above and particularly in relation to the protective provisions in Schedule 9 Part 1 that require to be considered by the SoS.

## **Dwr Cymru / Welsh Water**

**Location:** Maelor Gasworks access road

### **Interests**

**Alleged rights:** in respect of plots MGAR1 and MGAR2; the siting of and access to surface water drainage equipment and apparatus.

**Status:** statutory undertaker representor.

- 7.6.25 Dwr Cymru / Welsh Water [RR-008] made a representation in respect of a pipe in the roadway affected by the CA of access rights and TP at Maelor Gasworks and also sought to negotiate protective provisions.
- 7.6.26 Dwr Cymru / Welsh Water was invited to attend the CA hearing on 24 November 2016 but did not do so. At the hearing, the Applicant made oral submissions that Dwr Cymru / Welsh Water had confirmed that it does not have any apparatus or rights over plots MGAR1 and MGAR2 at Maelor Gasworks. The Applicant considered that the pipe that had been the subject of concern was confirmed as being a private pipe owned by WWU, and the BoR was updated accordingly. The Applicant was content to include protective provisions to benefit Dwr Cymru / Welsh Water (and these are included in the preferred draft DCO).
- 7.6.27 These oral submissions were made available on the examination web page [EV-031] and in the Applicant's Written Summary of Oral Submissions for that hearing [REP6-010] from 2 December 2016 (DL6). Had they been a matter of dispute with Dwr Cymru / Welsh Water amounting to an objection, there were ample remaining opportunities for this to be drawn to my attention. On that basis, it appears reasonable to conclude that the DL8 BoR [REP8-007] is correct and that this does not represent a substantive outstanding CA objection.
- 7.6.28 For this reason I am content that the representation does not raise any issues that indicate against the approval of the CA and TP provisions sought by the Applicant. I am content that this is not a circumstance where there is an unwithdrawn objection to CA relevant to s128(2) and (3) PA2008. However, neither have the proposed protective provisions been formally agreed.
- 7.6.29 There is no express agreement to the protective provisions in Schedule 9 Parts 3 and 5 benefiting Dwr Cymru / Welsh Water that have been included in the preferred draft DCO [REP9-007]. For these reasons, the SoS may wish to satisfy himself that the Applicant and Dwr Cymru / Welsh Water have agreed the protective provisions.

### **SP Manweb plc / SPEN**

**Location:** Multiple, throughout the Order land.

**Interests**

**Rights:** in respect of plots AR1, GC4, GC4C, GC4D, GC7, GC7A, GC7B, GC7D, GC9, GC9A, GC9B, GC9C, GC10, GC10A, GC10B, GC10C, GC12, GC12A, GC12B, SAT1, SAT1A, GC14, GC14A, SAT2, SAT3, GC15, GC15A, GC16, GC16B, GC17, GC17A, MGAR2 and MGAR3; access to and siting of electricity distribution network equipment and apparatus.

**Status:** statutory undertaker representor.

- 7.6.30 SP Manweb plc / SPEN (the distribution network operator (DNO)) [RR-035] made a representation in respect of effects on equipment and apparatus in multiple locations in the Order land, and subject to

negotiations on the grid connection offer and agreement and on protective provisions.

- 7.6.31 SP Manweb plc / SPEN played no active part in the examination beyond its WR of 11 July 2016 [REP1-021]. Whilst its expectation at that time was of a positive conclusion to negotiations on matters relevant to CA and TP, rights, a grid connection agreement for the application proposal, effects on installed apparatus and protective provisions, these matters have not been addressed in a final written submission by that AP or withdrawal of its representations. I note that this entity is a statutory undertaker and prospectively benefits from ss127 and 128 PA2008. However, its representations raise matters to be considered but do not amount to an objection to CA. For this reason I am content that this is not a circumstance where there is an objection that would invoke s128(2) and (3) PA2008. That being said, as this entity is the DNO and has made and will action the grid connection offer to the Applicant, there would appear to be virtue in ensuring that negotiations on protective provisions relating to its network assets have been drawn to a satisfactory conclusion.
- 7.6.32 For these reasons, the SoS may wish to consider confirmation from the Applicant and SP Manweb plc / SPEN that the protective provisions in Schedule 9 Part 5 are agreed.

### **FibreSpeed Ltd**

**Location:** Oak Road verge at gas connection alignment crossing point

**Interests:**

**Rights** in respect of plots OR1 and OR2, to place and use cables.

**Status:** representor.

- 7.6.33 FibreSpeed Ltd [RR-018] made a representation relating to the CA and TP of land in the verge of Oak Road required for the gas connection alignment containing fibre optic cable.
- 7.6.34 FibreSpeed Ltd played no part in the examination beyond its original RR which stated only that it benefits from assets in the Order land and that diversion would be required. At the CA hearing on 29 September 2016, the Applicant made oral submissions that FibreSpeed Ltd's assets could be avoided (*'the Applicant does not consider diversion will be required'*) and their remaining concerns (if any) would be addressed by protective provisions for telecommunications code operators incorporated into the draft DCO.
- 7.6.35 These oral submissions were available on the examination web page [EV-023-24] and in the Applicant's Written Summary of Oral Submissions for that hearing [REP3-017] from 6 October 2016 (D3). Had they been a matter of dispute with FibreSpeed Ltd, there were ample remaining opportunities for this to be drawn to my attention. On that basis, I consider that it is reasonable to conclude that this does not represent a substantive outstanding CA or TP objection. I have seen no evidence from FibreSpeed Ltd or from the Applicant to

support a view that FibreSpeed is a statutory undertaker and benefits from any protection under PA2008 ss 127 and 128. Nor does this representation appear to amount to an objection to CA. Whilst the original representation has not formally been withdrawn, I see no basis for a further response to it by the Applicant or reason for any further action to be taken to secure its withdrawal.

- 7.6.36 The representation does not raise any issues that indicate against the approval of the CA and TP provisions sought by the applicant. The relevant protective provisions in Schedule 9 Part 4 are applicable to all telecommunications code operators. Having reviewed the proposed protective provisions, I consider that they sufficiently protect a cable owner. Given its lack of engagement with the Examination, I see no rationale for any further consultation with FibreSpeed Ltd on their content.

### **Isycoed Community Council**

**Location:** overland gas connection alignment, Isycoed.

**Interests**

**Rights:** in respect of plots GC4, GC4A, GC4B, GC4C and GC4D to use drains, repair and maintain fences and to extend services for the benefit of retained land.

**Status:** objector.

- 7.6.37 Isycoed Community Council [RR-012] objected in respect of the CA of rights and TP of land in Isycoed for the gas connection alignment, where it benefits from rights to use drains, repair and maintain fences and extend services for the benefit of retained land.
- 7.6.38 The Applicant submitted [REP1-032] that it did not propose to interfere with any of Isycoed Community Council's rights and so did not propose to take any further action in respect of this objection.
- 7.6.39 Having considered this objection in the absence of any further information from the objector, I am satisfied that it does not raise any issues that indicate against the approval of the CA and TP provisions sought by the applicant.

### **Mr Robert Eccleston**

**Location:** overland gas connection alignment, Isycoed.

**Interests:**

**Freeholder** in respect of plots GC3 and GC3A.

**Status:** objector.

- 7.6.40 Mr Robert Eccleston [RR-032] objected in respect of the CA of rights and TP of land in Isycoed for the gas connection alignment. Mr Eccleston lives in a house on a smallholding in Isycoed. A grazing paddock extending from his home stretches to the boundary of the main application site and the Applicant seeks CA and TP over the westernmost portion of this paddock. Whilst this land is grazing land and is not part of the immediate domestic curtilage of the dwelling,

unlike the other land crossed by the proposed gas connection alignment, this land is clearly closely associated with and forms part of the setting for Mr Eccleston's dwelling.

- 7.6.41 Mr Eccleston's primary submission was that the application proposal was wrongly sited, would cause significant landscape, visual and other residential amenity harm and should not be consented (see Chapter 4). However, he was equally concerned that he did not wish to see the gas connection alignment pass through his property. Even if the generating station was correctly sited, he was not convinced that it was necessary to locate the gas connection alignment where it was located and therefore that it was necessary for it to pass through his land: there were in his view other siting options.
- 7.6.42 The Applicant explained [REP3-017 and REP3-017 Appendix 2] that the Proposed Development locates the gas connection alignment to the south of the main application site. Exiting the site at the southernmost point of its eastern boundary, the alignment executes a ninety degree turn to pursue the shortest route to the south towards Maelor Gasworks, avoiding constrained land. Land is required to commence this turn and the application design locates the first element of the turn on Mr Eccleston's land. If the turn were not to be located on his land, it would need to be located on land to the west within Wrexham Industrial Estate (WIE), and would cause disruption to existing use and development there. If it was located further to the north, the alignment would still need to cross Mr Eccleston's land en-route to Maelor Gasworks. The Applicant has explained more broadly (and this is addressed in Chapter 4 above) why the main application site was chosen and why (amongst other options) a site at or adjacent to Maelor Gasworks was not chosen. On this basis, the Applicant took the view that there was no alternative to the use of Mr Eccleston's land that would not cause equivalent or greater harm to another person's land interests.
- 7.6.43 Mr Eccleston noted the willingness of the Applicant to divert the gas connection alignment to avoid the Pickhill Bridge Farm solar farm (see paragraph 7.6.51 below). The Applicant explained that in the relatively unconstrained rural setting of Maelor and within a single large land ownership, it was feasible to divert the gas connection alignment by way of a voluntary agreement. However, the circumstances in Isycoed were very different and much more constrained by existing built development and multiple land ownerships. Moving the alignment by even a few metres in either direction would place the alignment too close to existing use and development within WIE or too close to existing residential curtilages in Isycoed itself.
- 7.6.44 The Applicant explained that it had sought to negotiate an agreement with Mr Eccleston but that he had not accepted their terms. Mr Eccleston responding by making clear that he objected in principle to their proposal. The Applicant also sought to make clear that once the construction works were complete and subject to their retained rights,

Mr Eccleston would regain the full surface use of his land. Mr Eccleston expressed concern that the buried pipeline might then constrain his options for the possible future development of his land, which might include the making of access from the rear of the WIE. The Applicant did not wish to speculate about possible future land use and development proposals on Mr Eccleston's land, highlighting that constraints to his intentions were matters that might be relevant to a compensation claim.

- 7.6.45 I viewed the gas connection alignment proposal in this location with very great care. It appeared that the harm occasioned by the land requirement here was more substantial in nature than at any other element of the alignment, due to its close proximity to Mr Eccleston's dwelling and to the close association between the dwelling and the affected land. However, following my site inspection, it became clear that there was no feasible alternative to the location of the alignment on this land.
- For reasons I have set out in Chapter 4, I am satisfied that the Applicant has undertaken a full and fair appraisal of siting options and that Mr Eccleston's concerns cannot reasonably be addressed by locating the generating station on other land.
  - A new alignment to the north of the application site was not considered by the Applicant on the basis of constraints. However, I consider that it would lead to substantial harm to the existing mature landscape enclosure for the site and would also interfere with the natural drainage of the site and so would not be feasible.
  - The land requirement, pipe specification and the effects of construction for the alignment were such that to place it through existing industrial use and development in the WIE to the west and south was not feasible (considered by the Applicant as Options 1 and 3) [REP3-017 Appendix 2]. I agree with this conclusion.
  - Equally, any change to the alignment that sought to relocate the exit of the connection alignment from the main site further to the north east (Option 1) would mean that the alignment would still have to pass through Mr Eccleston's land, and would make the alignment longer and closer to residential properties, introducing new harm and new APs [REP3-017 Appendix 2]. I agree that this would amount to similar harm to Mr Eccleston's interests as the current proposal does.

- 7.6.46 On balance therefore, I am content that the Applicant has demonstrated the case for CA and TP as proposed in this location.

**Messrs Edwards, Ellis and Done**

**Location:** overland gas connection alignment, Isycoed.

**Interests**

**Freeholders:** the Edwards family in relation to land at Cae Brynner Farm, Isycoed, (Plots GC5, GC5A-E and GC6); the Ellis family in



relation to land at Isycoed (GC7, GC7A-D, GC8, GC8A, GC9 and GC9A-C) and the Done family in relation to land adjacent to Lower Oak Farm, Bowling Bank (GC10, GC10A-C).

**Status:** not objectors.

- 7.6.47 The land agents Rostons represented the Edwards family, the Ellis family and the Done family in relation to their agricultural holdings. The Applicant sought to CA rights and TP land for construction of the gas connection alignment across land in these agricultural holdings.
- 7.6.48 Rostons made a RR and a number of WRs on behalf of these APs. They were provided with an opportunity to be heard at a CAH at which I would have sought to resolve whether their concerns were objections that I must consider, or matters relating to valuation and compensation which are not for this Examination. They declined to be heard, but the landowners did grant permission for the inspection of their land.
- 7.6.49 By the end of the examination, submissions on behalf of Messrs Edwards, Ellis and Done made on 22 December 2016 [REP7-005] had clarified that whilst these APs retained concerns about the quantum of compensation and their intention in corresponding with the examination had been to maintain these concerns, they were not concerned about the principle of CA or TP and hence there was no formal objection to consider.

#### **Pickhill Bridge Farm: the land interests of Mr Gerard Owen and the Crown**

**Location:** overland gas connection alignment, Maelor.

**Interests**

**Freeholder (subject to rectification):** in respect of Plots GC11, GC12, GC12A to E, GC13, SAT1, SAT1A, GC14, GC14A and B, SAT2, SAT3, SAT4, GC15, GC15A and B, GC16, GC16A to C, GC17 and GC17A.

**Rights:** in respect of access over plots MGAR1, MGAR2 and MGAR3.

**Status:** not an objector, land subject to other rights and registration issues.

- 7.6.50 Mr Gerard Owen is interested in land subject to the gas connection alignment CA and TP proposals between Maelor Gasworks and land adjacent to Lower Oak Farm, Bowling Bank. Mr Owen did not object to CA or TP. However, issues in relation to his land interests were raised in WRs, questions and oral submissions at hearings by the Applicant and by Earthworm. These issues relate to:
- A consented solar farm on the land (see paragraphs from 7.6.51 below); and
  - The apparent mis-registration of Crown interests in this land (see paragraphs from 7.6.71 below).

## **Pickhill Bridge Farm: Consented Solar Farm**

- 7.6.51 Earthworm Energy Ltd [REP1-004] (Earthworm) has the benefit of full planning permission granted on 31 July 2015 by WCBC (Ref P/2015/0287) pursuant to TCPA1990, to develop a solar farm at Pickhill Bridge Farm, on land owned by Mr Gerard Owen. The proposed gas connection alignment would pass through the consented solar farm array area, which affects BoR Plots GC12, GC12A and GC12B. The relationship between the solar farm permission land and the proposed gas connection alignment is best understood with reference to the plan in Annex 1 to the Applicant's written summary of oral submissions to the CAH held on 29 September 2016 [REP3-017]. A representative of Earthworm was present at the site inspection of 27 September 2016 [EV-013] which led to the preparation of this plan and at the CAH held on 29 September 2016, where the affected land was discussed and its extent agreed.
- 7.6.52 Earthworm itself is not an AP. Its interest arises from an agreement with Mr Owen relevant to the consenting and development of the solar farm. Nor did Mr Owen (who, subject to Crown interests discussed below holds the relevant interests in this land) seek to engage in the Examination as an AP on Earthworm's behalf. Noting the potential for the exercise of CA and or TP powers to significantly affect the use and development of this land to provide a solar farm and the submission of a WR raising these points [REP1-004], I accorded Earthworm opportunity to be heard at the 19 September 2016 CAH<sup>22</sup>. Emerging from this, I sought the Applicant's engagement with the preparation of protective provisions to ensure that, should the solar farm development commence before the Proposed Development, the effects of the CA and TP proposals upon the solar farm would be fair, proportionate and properly managed.
- 7.6.53 The Applicant initially expressed some concern about the need for protective provisions, on the basis that whilst a solar farm may be consented, there was no certainty that it would be constructed. However, as is recorded in Chapter 4, construction of the solar farm development commenced shortly before the end of the Examination. On that basis I am satisfied that protective provisions are warranted, because the solar farm has moved from a hope, provided for in a granted but unimplemented planning permission, to a reality, in the sense that built development is now underway and that it is highly probable that the solar farm will be operational before the WEC undertaker seeks to exercise its CA and TP powers.
- 7.6.54 The Applicant, Mr Owen and Earthworm engaged in the preparation of a commercial agreement, under which a diversion could route the gas connection alignment away from the solar farm array, ensuring that the construction of the Application Proposal would not necessitate the

---

<sup>22</sup> My consideration of the status of Earthworm in the Examination is recorded at paragraphs 1.9.2 - 3 above

dismantling of the solar farm or a significant portion of it. In turn, this would require a further grant of planning permission pursuant to TCPA1990 for a diverted gas connection route.

7.6.55 It should be noted that Earthworm was provided with an opportunity to make representations on the approach to be taken to protective provisions in the Applicant's preferred draft DCO through Examination Deadlines (DL)8 and DL9. Whilst their WR of DL7 [REP7-001] did provide some comments and thus their views were taken into account in the Applicant's preparation of the revised draft protective provisions set out at DL9 [REP9-007], they did not engage with the Applicant as requested or provide a WR or answers to my questions at DL8. They did not avail themselves of the opportunity to finesse the draft protective provisions included for their benefit at Schedule 9 Part 7 of the DCO [REP9-007]. In such circumstances, it does not appear to be the role of an ExA to place itself into the shoes of a beneficiary of protective provisions, who has been provided with an opportunity to comment on those provisions in draft but has not done so. Provisions advanced by the Applicant have been examined within the framework of generally applicable legal or policy requirement and those that do not breach these appear entitled to receive my recommendation.

7.6.56 It follows that in general terms, I am content that the Applicant's draft protective provisions make adequate provision for the effects of CA and TP on the solar farm development. However, there is one significant respect in which I am not content that it does so. Paragraph 76 of the draft protective provisions [REP9-007] provides the undertaker of the Proposed Development with the sole discretion to apply or to dis-apply the CA and TP powers applicable to Mr Owen's land and hence to the solar farm. As drafted by the applicant, this power can be exercised, irrespective of whether a diversion agreement has been entered into and a planning permission for a diverted route has been granted.

7.6.57 In my view, the potential for such an agreement and for the grant of such a planning permission provides a conditional alternative to CA and TP that the Applicant could deliver - if the commercial agreement is concluded and planning permission for the diversionary route is granted. If these conditions were fulfilled, but Paragraph 76 were to retain a complete discretion for the undertaker of the Proposed Development to decide whether or not to proceed with TP and CA powers for the original, un-diverted route, this would mean that, (with regard to paragraphs 11, 12 to 13 and 14 to 16 of the DCLG CA Guidance) the tests in s122 (2) and (3) of PA2008 would not be met in the following respects:

- In relation to s122(2), to approve the proposed CA powers in this location, the SoS must apply the test in DCLG CA Guidance paragraph 11 and would *'need to be satisfied that the development could only be [supplied with gas] if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that*

*purpose, and that is proportionate*<sup>23</sup>.<sup>1</sup> That is a test that factually cannot be met if there is an agreement to provide an alternative gas connection alignment and planning permission for that alignment has been granted.

- In relation to s122(3) the SoS is required to consider whether there is a compelling case for CA in the public interest. If an alternative gas connection alignment can be secured which enables the public benefit of the Proposed Development and the public benefit from the output of renewable electricity from the consented solar farm to co-exist without the need to disrupt the operation of the solar farm, then retention of CA powers for a route through the solar farm which would harm the private interests of the solar farm operation is not clearly demonstrated to be in the public interest: on the evidence before me, there would be remaining doubt on this point. Because an alternative that would not do such harm would then exist and because of the doubt created thereby as to the balance of benefit, I therefore consider that there would no longer be "*compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.*"<sup>24</sup>

I observe that the proposed TP powers in this location are to support the construction of the gas connection alignment for which the proposed CA powers would provide rights. It follows that if there are circumstances in which the CA powers would not meet the relevant legal tests and guidance and should fall away, then the related TP powers should also fall away.

7.6.58 In order to enable the tests in s122 (2) and (3) of PA2008 to be met, I consider that it is necessary to amend Paragraph 76 in the recommended DCO (Appendix D) in the following terms:

- To remove the unfettered discretion in the undertaker for the Proposed Development to determine whether or not to exercise the CA and TP powers.
- To provide that the proposed CA and TP powers are no longer applicable in circumstances where a commercial agreement (a contractually binding agreement) and a grant of planning permission to provide an alternative gas connection alignment that no longer needs to pass through the solar array are both in place.

---

<sup>23</sup> DCLG CA Guidance test at paragraph 11: the test set out there is in a contextualised example form which refers to the provision of satisfactory landscaping. It has been applied here by substituting the exemplar of satisfactory landscaping for the matter at issue here, the provision of a gas supply to the Proposed Development.

<sup>24</sup> DCLG CA Guidance at paragraph 13

- 7.6.59 I have added wording to accomplish this in the protective provisions in the recommended DCO, and an explanation of my recommended approach to drafting on this point is set out below in Chapter 8 (DCO).
- 7.6.60 My recommended approach recognises that these conditions may not be capable of being fulfilled. If a diversion agreement cannot be reached and / or planning permission for a diverted alignment cannot be obtained, then I consider that the undertaker for the Proposed Development would then have no reasonable alternative but to route the gas connection alignment on the consented route through the solar farm and the resultant disruption would be a matter for assessment and quantification in a compensation claim. In such circumstances, the statutory tests in s122 (2) and (3) and relevant DCLG CA Guidance would be met. The CA and TP powers would remain fully justified and should endure. My recommended DCO changes address this point.

### **AVAILABILITY AND ADEQUACY OF FUNDS**

- 7.6.61 I examined the availability and adequacy of funds for CA and TP compensation and am generally satisfied by the evidence in the submitted funding statement [APP-036] that the Applicant has sufficient access to funds to meet any likely compensation liabilities. Whilst the Applicant initially sought not to secure funding [APP-036] as appears to be necessary to meet paragraph 18 of the DCLG CA Guidance, pursuant to my questions the Applicant's preferred draft DCO [REP9-007] now includes Article 39.
- 7.6.62 Article 39(1) provides that the CA and TP provisions in Articles 17, 18, 22, 24, 25, 26, 27 and 28 (which, subject to my further discussion in paragraph 7.6.64 below, together comprise those provisions from which compensation liabilities might arise) must not be exercised until:
- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or*
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State.*
- 7.6.63 Article 39 does not specify the precise form of the guarantee or by whom it would be held. However, that is a matter for determination by the SoS if Article 39(1)(a) or (b) come to be discharged. I did question whether it was appropriate for the SoS to discharge these provisions, as in some previous Orders the relevant local planning authority has undertaken this obligation. However, WCBC did not see itself as being resourced to determine either the form or sum of such a guarantee.
- 7.6.64 I am generally satisfied that Article 39 provides a robust means whereby the necessary funding can be guaranteed. However, I note that Article 23 provides for the acquisitions of parts of certain

properties, enabling an AP subject to a notice to treat to counter serve notice seeking the purchase of the whole of a property in defined circumstances. It contains means by which a compensation claim can be made. In this respect it is an additional CA provision and one that should fall within the scope of the proposed guarantee mechanism in Article 39. I therefore recommend in Chapter 8 (DCO) below a technical change to the drafting of Article 39(1) to include Article 23 within the list of provisions subject to the guarantee.

- 7.6.65 Article 39(3) provides that a guarantee must be directly enforceable by any person to whom compensation is payable. I am satisfied that, further to the SoS' discharge of either Article 39(1) (a) or (b) in the light of this provision, the guaranteed funding will be held by a means that is directly accessible to persons entitled to compensation.

### **HUMAN RIGHTS ACT (1998) CONSIDERATIONS**

- 7.6.66 Article 1 of the First Protocol (relating to the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of property is to be interfered with) is engaged. I am satisfied that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.
- 7.6.67 Article 6 entitles APs to a fair and public hearing of their objections and is engaged. My provision of CAHs has enabled any AP who wished to be heard to be heard fully, fairly and in public.
- 7.6.68 Article 8 (relating to the right of the individual to '*respect for his private and family life, his home ...*') is engaged, with specific reference to the objection of Mr Robert Eccleston. I am satisfied that the proposed interference is in accordance with the law, is proportionate and is necessary in the interests of the economic well-being of the country.

### **TECHNICAL MATTERS: PA2008, SS127 TO 132**

- 7.6.69 I addressed the technical legislative requirements of PA2008 applicable to CA and TP in section 1.4 of my FWQs [PD-009]. These were followed up as required in the CA hearings. The applicant's response to my FWQs [REP1-032-33] provided the following information relevant to CA and TP:
- There are a number of entities that are statutory undertakers subject to ss127 to 128 PA2008. Where there is an outstanding objection from such an entity, this is identified and considered in my discussion of individual objections above.
  - S129 PA2008 does not apply as the acquiring body is not a public body within the terms of s129(1).
  - The National Trust does not own any Order land and so s130 PA2008 does not apply.
  - Consistent with Part 5 of the BoR [REP8-007] which confirms the absence of special category land, there is no proposal to acquire any land forming part of a common, open space or fuel or field

garden allotment subject to the operation of s131 PA2008, or rights over such land subject to the operation of s132 PA2008.

7.6.70 Nothing in respect of these positions changed during the remaining examination period and therefore I am satisfied of the following matters:

- ss127 to 129 PA2008 require consideration as identified and recommended in my consideration of individual objections above;
- s130 PA2008 does not apply and requires no further consideration by the SoS; and
- ss131 and 132 PA2008 do not apply and require no further consideration by the SoS.

### **CROWN LAND, THE WELSH MINISTERS AND MIS-REGISTRATION**

7.6.71 The Applicant has included Crown land, subject to s135 of PA2008 in the BoR and the Land Plans. This land is recorded in the Land Registry as being in the right of the Welsh Ministers. However, a technical issue relating to mis-registration of these interests arose. The initial position in respect of this issue is explained in the applicant's response to my FWQs [REP1-032-33] as follows:

**'S.206.** *The Applicant has included Crown land, subject to s135 of the PA2008, in both the Book of Reference (version 1) (Examination Library Reference OD-003) and the Land Plans (version 1) (Examination Library Reference APP-007). The following plots are identified as being Crown land: GC12, GC12A, GC12B, GC12C, GC12D, GC12E, SAT1, SAT1A, SAT2, GC14, GC14A, GC14B, SAT3, SAT4, SAT5, GC15, GC15A, SAT6, GC16, GC16A, GC16B, GC16C, GC17, GC17A and SAT7 (the "Welsh Ministers Interests" or "WM Interests").*

**'S.207.** *The Land Registry records the Welsh Ministers as being the registered proprietor of the WM Interests. However, the Applicant was informed by the person farming the land, Mr Owen, that this was an error. This was confirmed by Jacquelyn Rees of the Welsh Government's Commercial Legal Services in an email to Pinsent Masons LLP (solicitors for the Applicant) dated 5 April 2016. Ms Rees stated that the "land was registered to us in error by the Land Registry upon the occasion of voluntary first registration and has never been owned by The Welsh Ministers or its predecessors in title".*

**'S.208.** *However, as the Welsh Ministers remain listed as the registered proprietor at the Land Registry, it is necessary for the Applicant to treat both Mr Owen and the Welsh Ministers as being potential owners of the land in question. As a consequence, the Applicant requires formal consent from the Welsh Ministers pursuant to sections 135(1) and 135(2) of the PA2008 (such consent to be limited to the extent that the Welsh Ministers have any interests in the Order land).*

**'S.209.** *The Applicant formally requested consent pursuant to sections 135(1) and 135(2) of the PA2008 on 11 July 2016 (see Appendix 3). The Welsh Ministers gave their consent (to the extent that the Welsh Ministers have an interest in the land) for the purposes of sections 135(1) and 135(2) of the PA2008 in a letter dated 26 July 2016.'* [REP1-032 at pg 68]

7.6.72 It follows that the Crown consent letter of 26 July 2016 is worded in the following caveated manner:

*'I write further to your letter of 11 July 2016 seeking consent pursuant to sections 135(1) and 135(2) of the Act, from the Welsh Ministers to the making of a development consent order for the Proposed Development.*

*'As previously advised, the land being the subject of the Development Consent Order was registered to The Welsh Ministers in error and no application has been made by the correct owner to register the land in their name.*

*'I understand discussions have been taken place between yourselves and Jacquelyn Rees in Welsh Government and our consent is still required but we limit our consent to the extent that we have an interest in land which was incorrectly registered<sup>25</sup>.'* [REP1-033 at Appendix 4]

7.6.73 Having pursued this matter at the CA hearings, I understand that a rectification process is underway, as a consequence of which it may be that Mr Gerard Michael Ormrod Owen of Pickhill Bridge Farm, Cross Lanes, Marchwiel, Wrexham LL13 0UH (Mr Owen) will be registered with unencumbered interests in the relevant plots and the Crown interests will be removed. However, this cannot be assumed, and so the Applicant's approach of seeking and obtaining Crown consent pursuant to ss135(1) and 135(2) PA2008 pending finalisation of rectification is appropriate. In these circumstances too, I agree that it is appropriate that the limitation placed on the grant of Crown consent in the letter of 26 July 2016 is correct as the Crown should only purport to grant consent to the extent of its interests. It follows that I am satisfied that the Welsh Ministers letter of 26 July 2016 provides Crown consent pursuant to ss135(1) and 135(2) PA2008, to the extent that this may be required with respect to the plots identified above.

7.6.74 However, having reviewed the distribution of interests in land adjacent to the Maelor Gasworks, it became apparent that there may be additional plots that are subject to asserted Crown interests (and possible mis-registration issues) in addition to the land in which Mr Owen has an interest. I sought an update in Rule 17 Questions of 12 December 2016 at question 7 [PD-014]. The Applicant's response

---

<sup>25</sup> ExA emphasis added.



indicated that additional land may be subject to Crown interests and consent requirements [REP7-009]. Plots required for access to the Maelor AGI SAT5, 6 and 7 were shown in the BoR as owned by WWU, but with Welsh Ministers holding a category 2 interest. However, the Crown consent granted in July 2016 did not extend to consent in relation to those plots and interests.

7.6.75 On 17 January 2017, Welsh Ministers wrote to the Applicant to clarify that Plots SAT5, 6 and 7 should also benefit from a caveated Crown consent in the same terms as the July 2016 consent, relating to '*the purported Category 2 interest*'. [REP9-001] Flowing from this, I am content that the Crown consent process is now complete.

7.6.76 The Pickhill Bridge Farm solar farm is located within plots relevant to the rectification process in favour of Mr Owen. However, having considered the issues raised by the solar farm consent and issues of Crown consent together, I am satisfied that there is no overlap between the two that in any way affects the Crown consent that has been granted.

## **7.7 THE EXA'S OVERALL CA AND TP CONCLUSIONS**

7.7.1 My approach to the question whether and what CA powers I should recommend to the Secretary of State to grant has been to apply the relevant sections of the Act, notably s122 and s123, the DCLG CA Guidance and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss. Whilst TP powers are not subject to the same tests, these are sought for construction related works and form an integrated part of the land package for the Proposed Development. I have examined the need for and extent of the TP land as though it were to be subject to CA powers.

7.7.2 PA2008 s122 sets out the purposes for which CA may be authorised. In the light of the DCLG CA Guidance, it is necessary to consider whether the Applicant has justified its proposals for the CA of the land. I am satisfied that the legal interests in all the plots of land included in the revised BoR and shown on the Land Plans (as amended) would be required for both the principal development and for land required to facilitate that provision. The requirements of s122(2) (a) of PA2008 are therefore met for the purposes of the generating station development. Subject to my discussion of matters relating to the gas connection alignment and the solar farm diversion above, s122(2) (b) is met for the land required to facilitate the development.

7.7.3 For the purposes of PA2008 s122(3) I conclude that:

- the development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;

- the NPSs identify a national need for electricity generating capacity of the type that is the subject of the application;
- there is a need to secure the land and rights required and to construct the development within a reasonable commercial timeframe, and the development represents a significant public benefit to weigh in the balance;
- the private loss to those affected has been mitigated through the selection of the land and the minimisation of the extent of the rights and interests proposed to be acquired;
- the Applicant has explored all reasonable alternatives to the CA of the rights and interests sought. With the exception of land at Pickhill Bridge Farm subject to the solar farm consent, there are no alternatives which ought to be preferred; and
- secure funding would be available to enable the compulsory acquisition following the DCO being made and a guarantee of its availability is proposed in the DCO.

7.7.4 The case for CA powers requires to be based on the case for the development overall. I have shown in Chapter 6 that I have reached the view that development consent should be granted. As I have set out above, I am satisfied that the CA powers sought by the Applicant are justified and should be granted because I have concluded that there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with PA2008s122(3). My only caveat to that finding relates to the solar farm land at Pickhill Bridge Farm, where if a contractually enforceable agreement to divert the gas connection alignment is entered into and if planning permission is granted for that diversionary alignment, there would no longer be a compelling case for CA or TP of this land in the public interest. I have recommended a change to the protective provisions in Schedule 9 Part 7 of the recommendation draft DCO to provide that if such circumstances come to pass that CA and TP powers could no longer be exercised on the solar farm land.

7.7.5 Turning to PA2008 s 123, for reasons that I set out at the outset of this Chapter, I agree that the condition in subsection (2) is met and therefore that the CA powers sought can be granted. For the same reasons and based on the same evidence, I also consider that the TP powers sought are necessary and should be granted.

## **8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **8.1 INTRODUCTION**

- 8.1.1 The application draft Development Consent Order (DCO) (Revision 0) [APP-033] and an Explanatory Memorandum (EM) [APP-034] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the draft DCO as originally submitted, with each of its articles and schedules.
- 8.1.2 The application draft DCO was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009), but departed from those clauses to draw upon drafting used in made Orders for similar development under the Planning Act 2008 (PA2008), the Transport and Works Act 1992 and other Acts authorising development [APP-034]. Building on this foundation, it was also then closely modelled on the drafting approach taken to the made Meaford Gas Fired Generating Station Order 2016 (SI No 779/2016) (The Meaford Order). The Meaford Order was proposed by an applicant in the same group of companies as the current Applicant and for a similar development: an equivalently scaled gas fired generating station. The two Orders contain significant elements of shared purpose, structure and drafting.
- 8.1.3 This Chapter provides an overview of the changes made to the DCO during the Examination process, between the application draft DCO and a final preferred draft DCO submitted by the Applicant at Deadline (DL) 9 [REP9-007] (Revision 7). It then considers changes made to the draft DCO in order to arrive at the Recommended DCO in Appendix D to this report.
- 8.1.4 The following sections of this chapter:
- report on the processes that I used to examine the draft DCO and its progress through the Examination;
  - report on the structure of the draft DCO;
  - briefly summarise changes made to the DCO during the Examination up to DL8 that were not the subject of contention (where, following consultation and dialogue as necessary, the Applicant and relevant Interested Parties (IPs) supported the changes);
  - report in more detail on those changes that were the subject of contending submissions in written representations and or hearings;
  - set out final changes that I have proposed subsequent to DL8, consequent on my consideration of the evidence and to address matters of drafting convention;
  - address the relationship between the DCO and other consents and legal agreements; and
  - address the provision of a defence against nuisance in the DCO.

## **8.2 EXAMINATION OF THE DCO**

- 8.2.1 As a precursor to outlining the approach that I took to examining the DCO, it is necessary to record how I addressed the relationship between the DCO applied for here and the closely related Meaford Order. Owing to their need to respond to particular facts relevant only to their sites, no two DCOs are identical and that is the case here. However, this is an instance where it is reasonable for this Applicant, advancing a very similar proposal to that consented in the Meaford Order, to adopt the same drafting approach as that which commended itself to the SoS in at Meaford, unless there has been or is a relevant change in circumstances.
- 8.2.2 In this respect, I note that there are some significant differences between the DCO applied for here and Meaford Order. Some of these differences are necessary to adapt this DCO to the specific circumstances of its local site. Others relate to the location of this application in Wales (Meaford is in England), and to the existence of a substantial gas connection alignment that did not form part of the Meaford application. In examination, I have sought to understand the basis for these differences.
- 8.2.3 A large number of provisions nevertheless are drafted in common terms between this DCO and the Meaford Order. Where this is the case, I have reviewed whether there are any legislative or policy matters, matters arising from the individual circumstances of the application site or matters arising from the representations that I have considered that indicate against the drafting approach taken and approved by the SoS at Meaford. If there are no such matters, as a matter of consistency on two very similar proposals, I have taken the view that drafting approved by the SoS in the decision on the Meaford Order should not be changed in this DCO.
- 8.2.4 My review of the application versions of the draft DCO (Revision 0) [APP-033] and the EM [APP-034] commenced before the formal start of the Examination. I documented matters arising from the application versions during the pre-examination period, as part of my preparation for the Preliminary Meeting (PM). My Rule 6 Letter [PD-006] was accompanied by a schedule of matters for examination relating to the draft DCO [PD-006, Annexes F, G and H], made available to the Applicant and IPs before the start of the Examination, a process which in turn enabled me to hold the first Issue-specific Hearing (ISH) on the DCO on 29 June 2016 [EV-003 to EV-004], the afternoon of the same day as the PM.
- 8.2.5 Matters for examination arising from the DCO and progress on them were tracked throughout the Examination, using further ISHs on the DCO, held as follows:
- 28 September 2016 [EV-013][EV-015-16];
  - 24 November 2016 [EV-025][EV-032-33];

- 8.2.6 The Applicant updated the draft DCO several times during the Examination, responding to issues raised by IPs and by me, through both written representations (WRs) and as a consequence of the hearing processes. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The 'work-in-progress' versions of the draft DCO submitted by the Applicant during the Examination were as follows:
- Revision 1 [EV-008] (clean copy) and [EV-007] (tracked changes) was submitted in response to matters raised in the DCO ISH on 29 June 2016;
  - Revision 2 [REP2-012] (clean copy) and [REP2-013] (tracked changes) was submitted in response to matters raised in discussions with IPs, from my first written questions (FWQs) and from WRs at DL1;
  - Revision 3 [REP3-012] (clean copy) and [REP3-013] (tracked changes) was submitted in response to matters raised up to and in the DCO ISH on 8 September 2016;
  - Revision 4 [REP4-011] (clean copy) and [REP4-012] (tracked changes) was submitted in response to matters raised up to and in preparation for the DCO ISH on 24 November 2016; and
  - Revision 5 [REP6-012] (clean copy) and [REP6-013] (tracked changes) was submitted in response to matters raised at the DCO ISH on 24 November 2016.
- 8.2.7 I published a commentary on the draft DCO for consultation [PD-015] towards the end of the Examination on 12 December 2016. This was based on the Applicant's then preferred draft: the Revision 5 draft DCO [REP6-012].
- 8.2.8 The Applicant and IPs were invited to comment on my DCO commentary by DL7, 4 January 2017. Substantive comments on the matters that I raised were provided by the Applicant [REP7-010] and Natural Resources Wales (NRW) [REP7-004 Annex A]. Indirect responses raising matters relevant to protective provisions and the security in the DCO for mitigation measures were also raised by Earthworm Energy (Earthworm) [REP7-001], Kellogg's [REP7-002], National Grid Gas [REP7-003] and Wales and West Utilities (WWU) [REP7-006]. Wrexham County Borough Council (WCBC) made no comment on DCO matters at this deadline. Similarly, no comments were received from any local resident or community-based IPs.
- 8.2.9 The Applicant also submitted a revised draft Revision 6 DCO [REP7-011] (clean copy), [REP7-012] (tracked changes) at DL7, taking account of the matters arising from my commentary to which it had responded. The EM was also revised at this time, taking account of all changes to date [REP7-016] (clean copy) and [REP7-017] (tracked changes). A key emerging change at this point was the Applicant's inclusion of draft protective provisions for Earthworm, in respect of their solar farm proposal on land at Pickhill Bridge Farm that is proposed to be crossed by the gas connection alignment.

- 8.2.10 Towards the end of the Examination, I revised the matters to be submitted at DL8 and introduced a new deadline (DL9) to enable matters relating to protective provisions largely in relation to Earthworm and their solar farm proposal to be addressed and my request for further information (R17 questions) to be responded to [PD-017-18]. The Applicant did not provide a further revised DCO at DL8, wishing to respond to matters raised in submissions by other IPs before it did so. National Grid Gas indicated its satisfaction with protective provisions [REP8-001] at that point. WWU indicated its broad satisfaction, but made clear that negotiations on protective provisions were not yet complete [REP8-003]. No other IPs responded to DL8 in a manner relevant to the DCO. In this regard it should be noted that whilst Earthworm was provided with an opportunity to respond to the Applicant's proposals in respect of protective provisions for its undertaking at DL8, it did not do so.
- 8.2.11 At DL9, the Applicant submitted a final preferred draft DCO: Revision 7 [REP9-007]. A version with tracked changes was not provided. However, it should be noted that the changes between DCO Revision 6 and Revision 7 are confined to addressing outstanding matters in relation to protective provisions for the benefit of WWU and Earthworm as best as the Applicant was able. That being said, in the absence of a concluded position from WWU at DL8 and with no submissions at all from Earthworm at that deadline, the protective provisions submitted at DL9 do not represent concluded positions with these two entities. (These matters are expanded upon further in Chapter 7 above.) The remaining content of DCO Revision 7 is unchanged from Revision 6.
- 8.2.12 Unless specifically indicated otherwise, all references to provisions in the draft DCO in this chapter are based on the final preferred draft Revision 7 DCO [REP9-007].

### **8.3 THE STRUCTURE AND OPERATION OF THE DRAFT DCO**

- 8.3.1 The draft DCO closely mirrors the structure and drafting approach taken in the Meaford Order.

#### **STRUCTURE**

- 8.3.2 The structure of the draft DCO (taken from the Applicant's preferred draft revision 7 DCO [REP9-007]) can be summarised as follows:

#### **Articles**

- *Part 1: Preliminary matters*
- Citation, commencement and interpretation.
  
- *Part 2: Principal powers*
- Development consent granted by the DCO;
- Maintenance of the authorised development;
- Operation of the authorised development;
- Benefit of the Order;

- Consent to transfer benefit of the Order; and
- Defence to proceedings in respect of statutory nuisance.

*Part 3: Streets*

- Power to alter layout of streets;
- Street works;
- Temporary prohibition or restriction of use of streets;
- Access to works;
- Agreements with street authorities; and
- Traffic regulation.

*Part 4: Supplemental powers*

- The discharge of water; and
- Authority to survey and investigate land.

*Part 5: Powers of acquisition*

- Compulsory acquisition of land;
- Compulsory acquisition of rights;
- Application of the Compulsory Purchase (Vesting Declarations) Act 1981;
- Time limit for exercise of authority to acquire land compulsorily;
- Statutory authority to override easements and other rights;
- Acquisition of subsoil only;
- Acquisition of part of certain properties;
- Private rights;
- Rights under or over streets;
- Temporary use of land for carrying out the authorised development;
- Temporary use of land for maintaining the authorised development;
- Statutory Undertakers;
- Apparatus and rights of statutory undertakers in streets; and
- Recovery of costs of new connection.

*Part 6: Miscellaneous and general*

- Felling or lopping of trees and removal of hedgerows;
- Application of landlord and tenant law;
- Operational land for purposes of the Town and Country Planning Act 1990 (as amended) (TCPA1990);
- Protective provisions;
- Certification of plans;
- Service of notices;
- Procedure in relation to certain approvals;
- Arbitration; and
- Funding.

## **Schedules**

*Schedule 1: Authorised Project*

- (The authorised development set out as numbered works; and
- Ancillary works that are integral to the development.)

- *Schedule 2: Documents and Plans to be Certified*  
(A tabulation of documents and plans to be certified by the Secretary of State, largely derived from the ES, but taking account of revisions prepared during the examination process.)
  
- *Schedule 3: Requirements*  
(The requirements applicable to the authorised development.)
  
- *Schedule 4: Streets Subject to Permanent Alteration of Layout*  
(A tabulation of streets to be permanently altered.)
  
- *Schedule 5: Streets Subject to Street Works*  
(A tabulation of streets subject to street works.)
  
- *Schedule 6: Temporary Prohibition or Restriction of the Use of Streets*  
(A tabulation of streets subject to temporary prohibition or restriction of use.)
  
- *Schedule 7: Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and Imposition of New Restrictions*
  - (Specific provisions modifying relevant provisions of the Land Compensation Act 1973 and the Compulsory Purchase Act 1965; and
  - a tabulation of plots and the purpose for which the new rights and restrictions may be acquired, with reference to the land plan.)
  
- *Schedule 8: Land of Which Temporary Possession May be Taken*  
(A tabulation of plots and the purpose for which temporary possession may be taken, with reference to the land plan.)
  
- *Schedule 9: Protective Provisions*  
(for the benefit of:
  - National Grid;
  - BT group plc;
  - Dwr Cymru / Welsh Water;
  - Operators of telecommunications code networks;
  - Electricity, gas, water and sewerage undertakers;
  - Wales and West Utilities; and
  - The Solar Operator.)
  
- *Schedule 10: Procedure for Discharge of Requirements*  
(Setting out decision-making processes, timescales and appeal processes.)

8.3.3 I am broadly content that the structure of the DCO is fit for purpose and I do not recommend any significant changes to the structure as outlined above. However, the table of contents in the Applicant's preferred draft revision 7 DCO [REP9-007] does not fully accord with the structure and content of that draft in two respects:



- In the Table of Contents, Schedule 2 is titled 'Environmental Statement', whereas in the body of the draft, Schedule 2 is titled 'Documents and Plans to be Certified'.
- Protective provisions benefiting a solar farm operator that were subject to detailed development in the final weeks of the Examination are found at Schedule 9 Part 7, but this has not been reflected in the Table of Contents, which omits Part 7.

8.3.4 I recommend that the Table of Contents should be amended to reflect the correct title of both of these provisions as drafted in the body of the preferred revision 7 DCO [REP9-007].

## **OPERATION**

8.3.5 Before addressing changes to the content of the DCO brought about in the Examination, it is important to factually describe some approaches taken in drafting to the operation of the DCO that are particular to its circumstances. These are described not because I am recommending changes to them, but in recognition of the fact that they are somewhat different from the approaches taken in other similar DCOs. They are matters of which it will assist readers of this report to be aware of when considering the DCO that I recommend in Appendix D.

8.3.6 The DCO draws a very clear distinction between the Order limits and the Order land. The Order limits are tightly defined, to encompass on that land on which the authorised development, the Power Station Complex would be delivered, alongside the land needed temporarily for construction processes related to the Power Station Complex. The Order limits are defined in Article 2(1) as follows:

- *"Order limits" means the limits shown on the works plan within which the authorised development may be carried out'.*

Reference to the Works Plan [APP-008] clearly identifies the limited extent of land outlined in red that comprises land within the Order limits. This in turn is the location of the Works Nos. 1 to 5 identified in Schedule 1 to the DCO, and these are the sum total of the works sought to be authorised by the DCO in order to deliver the generating station.

8.3.7 In contrast, the Order land is more broadly defined as including the Order limits and the Power Station Complex as a subset of it, but also including that additional land on which all other powers sought by the Applicant would be exercised, including the compulsory acquisition (CA) of land and rights for the proposed gas connection alignment, the above ground installation (AGI) at Maelor Gasworks and for access and the temporary possession (TP) of land for the construction of these. The Order land is defined in Article 2(1) as follows:

- *"Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference'.*

Reference to the Land Plans [REP9-006] clearly identifies the significantly greater extent of land outlined in red that comprises land within the Order land.

- 8.3.8 This distinction is significant, because in turn, the DCO provides its beneficiary, the undertaker, with a significant suite of rights over the Order land, in addition to development consent for the Power Station Complex in the Order limits. It does so because powers relevant to matters such as CA, TP, access and street works, drainage, surveys, tree and hedgerow works are not conferred by the separate TCPA1990 planning permissions that has been granted for the gas connection alignment. These powers do not provide directly for the development consent of the gas connection alignment, but nevertheless are necessary to enable the alignment to be developed in due course.
- 8.3.9 Where the definition of the Order land refers to '*land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development*', it is seeking to entrain within its definition the land outside the Order limits on which these powers to assist the delivery of the gas connection alignment are sought. Similar formulations are then found extensively in the body of the DCO, the purpose of which is to ensure that powers relevant to the delivery of the gas connection alignment are not constrained to the tightly defined Order limits but also apply as necessary to the broader area of the Order land.
- 8.3.10 For example, in Article 10 (Street works), there is a provision that '*[t]he undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land...*' exercise the power donated by the article. The purpose of this drafting is to ensure that, if needs be, the relevant power is available for use to support the delivery of the consented gas connection alignment on the Order land, in addition to the development of the Power Station Complex within the Order limits. Similar formulations are found for the same purpose within Article 11 (temporary prohibition or restriction of use of streets), Article 12 (access to works), Article 14 (traffic regulation), Article 15 (discharge of water), Article 16 (authority to survey and investigate the land), Article 21 (statutory authority to override easements and other rights), Article 25 (rights under or over streets), Article 26 (temporary use of land for carrying out the authorised development) and Article 31 (felling or lopping of trees and removal of hedgerows).
- 8.3.11 The overarching reason for all of these provisions is to ensure that the DCO provides the undertaker with the powers that it needs to implement the separate TCPA1990 planning permission for the gas connection alignment granted in September 2016; the DCO cannot itself provide development consent for that alignment because it is not within the powers of a DCO in Wales to include such associated development.

8.3.12 I have given very careful consideration throughout the examination to the appropriateness of and relationship between these approaches to the 'Order limits', the 'Order land', 'authorised development' and 'any other development necessary for the authorised development that takes place within the Order land'. I have considered the interaction between this drafting approach and applicable policy and no issues have arisen that indicate against it. I have considered whether this approach causes any uncertainty about the scope of works or the extent of the assessed Rochdale Envelope and have concluded that it does not. Similarly, I have considered the interaction between this drafting approach and the matters raised in representations. I have also reviewed the approach taken alongside that taken in other Welsh DCOs identified in Chapter 3 Section 3.7 above. I have found no matters that lead me to recommend that this approach ought to be changed.

#### **8.4 UNCONTENTIOUS CHANGES IN THE EXAMINATION**

8.4.1 The examination of the DCO proceeded throughout the Examination period in a collaborative manner. Hearings were conducted as round table sessions, following which the Applicant advanced draft revisions to respond to representations, my questions and oral discussions.

8.4.2 The change process between the application draft DCO up to the Revision 6 DCO was fully documented by the Applicant in a process that is recorded in Section 8.2 of this Chapter above. A substantial number of revisions were proposed, but these were all to address comprehension, clarity or interpretation and to address good practice in drafting. For reasons set out in Section 8.2, this record of changes does not extend to the final preferred draft Version 7 DCO. However, the document references included there enable all uncontentious changes up to Version 6 to be tracked. On that basis, I do not record them here, providing only a general record that, subject to consideration of the contentious and unresolved technical matters that I address in the following sections of this Chapter, I am content that the aggregate of changes made up to the Revision 6 DCO appropriately addressed all of the issues that arose in the Examination.

8.4.3 As part of that change process, I am content that all performance standards necessary to meet applicable NPS and other important and relevant policies as identified in Chapters 3 and 4 above are now met in the preferred draft DCO. I am also content that the mitigation that requires security in the DCO has (with the exceptions recorded and further discussed below) been provided.

8.4.4 By DL7, there were only two outstanding sets of concerns that the Applicant had not then fully absorbed into its then preferred draft DCO:

- finalisation of protective provisions; and

- views from my DCO commentary and NRW on the disaggregation of references to the foul and surface water drainage systems in Requirement 12.

These matters are addressed further in Section 8.5 below.

8.4.5 There are also a small number of further minor technical changes that I recommend to address good drafting practice, which are addressed briefly in Section 8.6 below.

## **8.5 CHANGES SUBJECT TO CONTENTION**

8.5.1 The following section reports on changes to the draft DCO that were the subject of substantial negotiation, written and / or oral submissions during the Examination process. Matters at issue were as follows:

- Requirement (R)12: Foul and Surface Water Drainage; and
- Schedule 9 Part 7: for the Protection of the Solar Operator.

### **Requirement 12: Foul and surface water drainage**

8.5.2 Following consideration of my commentary on the DCO [PD-015]. NRW identified that it would be desirable if R12 distinguished between the surface water drainage system and the foul water drainage system. The Applicant proposed a change to R12 [REP7-010] which addressed this in part, but did not fully address the potential need to fully and separately distinguish the design and operation of the foul and surface water drainage systems in its preferred draft DCO. On balance, I consider that it is important and necessary to ensure that the design and implementation of the surface water drainage system (which amongst other things provides an important element of natural environment mitigation for great-crested newts (GCNs) and also relates closely to landscape mitigation design and implementation), should not become confused with the design and implementation of the separate foul water drainage system (which has no natural environment or landscape mitigation functions). It appears necessary that R12 is drafted in terms that would enable entirely separate foul water and surface water drainage plans to be formed and to come forward for discharge, at separate times if needs be. In the recommended DCO in Appendix D, I recommend appropriate changes to R12 to achieve this objective.

### **Protective provisions for the Solar Farm Operator**

8.5.3 As was described in Chapter 7 above, the proposed gas connection alignment passes across land owned by Mr Owen on which planning permission has been granted to Earthworm to develop and operate a solar farm. As noted in that Chapter, the solar farm permission is in the process of being implemented. If the compulsory acquisition (CA) and temporary possession (TP) powers in the Order as applied for were to be exercised in circumstances where the solar farm were to have been completed and made operational (circumstances which

must be considered as highly likely given that commencement has occurred), they would require the removal of part of the solar farm array.

8.5.4 I accept that the outcome of removing parts of an operational solar farm installation would be justified in circumstances where there is no alternative, but NPS EN-1 paragraph 5.10.19 does require the Applicant to seek to minimise the adverse effects of such an outcome (which can include taking design measures). During the examination, the Applicant identified that it was seeking a commercial agreement with Mr Owen and Earthworm that would have the effect of providing for an alternative diversionary route for the gas connection alignment. If such an agreement can be concluded, this in turn would mean that there would be an alternative under which the solar farm would not need to be disrupted and CA and TP would not be required in order to construct the gas connection. This outcome would be conditional on the conclusion of the necessary legal agreement and on a grant of planning permission for the diversionary route by WCBC pursuant to TCPA 1990.

8.5.5 Nevertheless, the Applicant's preferred draft DCO at paragraph 76 of Schedule 9 Part 7 (for the Protection of the Solar Operator) (The Solar Protective Provisions) [REP9-007] provides that CAP and TP powers would only cease to apply to the solar farm site '*if the undertaker (acting in its sole discretion) determines that it no longer requires the ability to carry out any specified work over the part of the Order land subject to the planning permission*'. This provides for the continuation of CA and TP powers in circumstances where both a legal agreement providing for a diversionary route had been concluded and planning permission for that route had been granted. I accept that in such circumstances, it may well be unlikely that such powers would be exercised. However, the persistence of any un-used and unnecessary CA and TP powers would still burden the land and provide uncertainty to the solar farm operator. For reasons set out in Chapter 7 above and to comply with DCLG CA Guidance, the continuation of such powers after a point at which they have become unnecessary is not a matter that I consider it appropriate to recommend to the SoS.

8.5.6 To give effect to my finding on this point, I consider that Paragraph 68 (Interpretation) of the Solar Protective Provisions needs to be amended to define the following additional terms not defined in the Applicant's preferred draft:

- "*diversionary agreement*" means a contractually binding agreement providing for the passage of a gas pipeline around the solar farm site;[and]
- "*diversionary planning permission*" means any planning permission that may be granted pursuant to the 1990 Act providing for the routing of a gas pipeline to avoid the solar farm site [.]

It is necessary to define these terms to enable Paragraph 76 to make appropriate provision for the falling away of CA and TP powers over the solar farm site, should an alternative route for the gas connection alignment have become available, pursuant to both a diversionary agreement having been concluded and a diversionary planning permission having been granted.

8.5.7 I consider that Paragraph 76 (Compulsory acquisition and temporary use) should be replaced in the following terms:

*76.—(1) The rights set out in sub-paragraph (2) are not exercisable by the undertaker over the solar farm site if—*

- (a) a diversionary agreement has been concluded; and*
- (b) a diversionary planning permission has been granted which authorises the construction of a gas pipeline over the route to which the diversionary agreement applies.*

*(2) Sub-paragraph (1) applies to the following rights—*

- (a) article 17 (compulsory acquisition of land);*
- (b) article 18 (compulsory acquisition of rights etc);*
- (c) article 22 (acquisition of subsoil only);*
- (d) article 24 (private rights);*
- (e) article 25 (rights under or over streets);*
- (f) article 26 (temporary use of land for carrying out the authorised development);*
- (g) article 27 (temporary use of land for maintaining the authorised development); and*
- (h) article 28 (statutory undertakers).*

Further to my reasoning on CA provisions in paragraph 8.6.2 below, I did consider whether Article 23 should also be brought within the scope of this change, but take the view that as there is no land to which it could apply within the solar farm site, it is not necessary to include it here.

8.5.8 I also recommend minor technical drafting changes to the Solar Protective Provisions, to ensure the consistent definition and application of terms and to remove technical detail about the design of the pipelines from the definition of the term "gas pipeline" which is not necessary to secure the interpretation and application of the provisions.

8.5.9 These changes have been incorporated in the recommended DCO in Appendix D. They will enable DCLG CA Guidance to be met by providing that if an alternative to CA is agreed and obtains planning permission, CA and TP powers will no longer be able to be exercised in the solar farm area, as at that point there would be a reasonable alternative and so those powers would be unnecessary.

8.5.10 The Applicant does not support the change to Paragraph 76 outlined above. However, the prospective need for it and my reasons for

proposing it were ventilated at the Compulsory Acquisition Hearing (CAH) held on 24 November 2016 [EV-031][REP6-010]. For reasons set out more fully in Chapter 7 (CA and TP) above, I remain of the view that that this change is essential to securing compliance of the DCO with statutory tests and guidance relevant to CA. The Applicant has been provided with a full opportunity to be heard on this point and I have given full consideration to all matters raised.

## **8.6 OTHER TECHNICAL DRAFTING CHANGES**

- 8.6.1 Having considered the Applicant's preferred draft Revision 7 DCO [REP9-007], I have recommend minor technical drafting changes in Schedule 9 Part 7 to address good practice in Statutory Instrument drafting in addition to those discussed in the Examination. These changes have been incorporated in the recommended DCO in Appendix D. However, as none of these changes effect any change to the drafting intention of the DCO, I do not report on them in detail here. They include matters such as the consistent application capital or lower case letters in terms, and the definition of documents that are proposed to be certified documents by reference to their descriptions in Schedule 2.
- 8.6.2 I have noted that the definition of the "undertaker" in the Applicant's preferred draft DCO [REP9-007] refers only to Wrexham Power Ltd, whereas made generating station Orders (including the Meaford Order) more normally include a reference to '*any other person who for the time being has the benefit of this Order*', in accordance with the transfer of benefit provision in the DCO. I do not consider that a change to incorporate this normal reference to transfer of benefit materially changes the DCO as applied for and so I recommend that it should be included. Drafting is included in Appendix D.
- 8.6.3 I have also noted that where the Applicant's preferred draft DCO [REP9-007] refers in drafting to the set of provisions relevant to CA, it has referred to the following provisions: Articles 17, 18, 22, 24, 25, 26, 27 and 28. As a matter of fact and as discussed in Chapter 7 at paragraph 7.6.64 above, Article 23 is also a CA provision which enables a compensation claim to be made. For this reason and further to the discussion in Chapter 8, it is necessary for it to be included with the CA provisions that are subject to the provision of a guarantee for compensation funding that has been provided by Article 39. Its exclusion from the list in that provision appears to be a technical oversight and the inclusion of it appears to make no material difference to the Applicant's intention in providing the proposed guarantee. My recommended draft DCO in Appendix D therefore includes a change to Article 39(1) to add Article 23 to the list of CA provisions that are made subject to the guarantee.
- 8.6.4 I have noted that Article 21 in the Applicant's preferred draft DCO [REP9-007] provides statutory authority to override easements and other rights. Arguably, it is not necessary to duplicate the function of PA2008 s158 to which it gives effect within the article as drafted.

However, I have taken the view that the reference to s158 in this Article as drafted equally does no harm. I am also conscious that the Meaford Order contains an Article for the same purpose and in the same terms as that proposed here. On balance therefore, for consistency with the Meaford Order, I did not recommend any change to Article 21.

## **8.7 LEGAL AGREEMENTS AND OTHER CONSENTS**

8.7.1 At present, there are no made legal agreements that the SoS needs to take into account. Further to matters relevant to protective provisions recorded above in both Chapter 7 and in this Chapter, it is possible that legal agreements between the Applicant and WWU (relating to the provision of a secure perimeter at Maelor Gasworks) and with Mr Owen and /or Earthworm (relating to the diversion of the gas connection alignment at Pickhill Bridge Farm) may be concluded. The SoS may wish to make inquiries of these parties in this regard.

8.7.2 The other consents necessary to deliver the Proposed Development are recorded and discussed at Section 1.8 of this report above. With the exception of matters arising from the TCPA1990 consenting processes for the gas connection alignment and their relationship with the solar farm discussed above, none give rise to any concerns for the drafting of the DCO that were matters of contention or relevant to breaches of applicable policy and require to be addressed here.

8.7.3 I have considered the other consents recorded in Section 1.8 of this report. Without prejudice to the exercise of discretion by other authorities, and again excepting the matters arising from the gas connection alignment consents that I discuss in Section 8.5 above, I am content that none indicate a significant barrier to the Proposed Development or a provide a reason why the DCO should not be made by the SoS in the form set out in Appendix D.

## **8.8 NUISANCE**

8.8.1 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) regulation 5(2)(f) requires that that and application must be accompanied by.... "*a statement whether the proposal engaged one or more of the matters set out in section 79(1) [...] of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them.*" This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-044].

8.8.2 Having reviewed the SSN in the light of matters raised in representations, I am content that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the Proposed Development. I am also content that the Applicant has provided appropriate mitigation for foreseeable nuisance types and secured this in the DCO, via the requirements and references to the Construction Environmental



Management Plan (CEMP), Construction Traffic Management Plan (CTMP) and the Site Waste Management Plan (SWMP). The SSN concludes that with the applied and secured mitigation, the risk of nuisance occurring will be negligible. I agree with this conclusion.

- 8.8.3 Article 8 of the DCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for nationally significant infrastructure projects (NSIPs). The drafting is based on the MPs. I agree that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is not a buffer against the consequences of poor practice. It exists and is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs. Having regard to NPS EN-1 section 4.14 in the light of the information in the SSN and the mitigation security provided in the DCO, I see no need to recommend changes to the proposed defence provision.

## **8.9 CONCLUSIONS ON THE DCO**

- 8.9.1 I have considered all iterations of the draft DCO as provided by the Applicant from the application version Revision 0 to Revision 6 and considered the degree to which the final preferred draft Revision 7 DCO [REP9-007] has addressed outstanding matters. I have identified a small number of matters in respect of which I consider that correcting changes are required to the final preferred draft Revision 7 DCO. These have been the subject of recommendations in this Chapter. They are also included in the recommended draft DCO in Appendix D of this report. The recommended draft DCO also includes a number of minor changes from the Applicant's final preferred draft, to reflect current statutory instrument drafting conventions.
- 8.9.2 Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, I recommend that if the SoS is minded to make the DCO, it should be made in the form set out in Appendix D, subject only to the possible need for the SoS' further consideration of matters relevant to protective provisions that I have identified above.

## 9 SUMMARY OF FINDINGS AND CONCLUSIONS

9.1.1 In relation to s104 of PA2008, I conclude in summary that:

- making the recommended DCO would be in accordance with NPSs EN-1, EN-2 and (to the limited extent of its application to an ancillary land requirement) EN-4 and would also be in accordance with PPW, WSP, the development plan and other relevant policy, all of which have been taken into account in this report;
- I have had regard to the LIR produced by WCBC in making this recommendation;
- in making the DCO, the SoS would be fulfilling his duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the NERC Act 2006;
- whilst the SoS is the competent authority under the Habitats Regulations, I conclude that the Proposed Development would not adversely affect European Sites, species or habitats, and I have taken this into account in reaching my recommendation;
- with regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- the Proposed Development would have no adverse effects that would outweigh its benefits; and
- there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

9.1.2 In relation to the application for CA and TP powers within the recommended DCO, I conclude in summary terms that:

- the Proposed Development for which the land and rights are sought would be in accordance with national policy, as set out in the NPSs;
- the NPSs identify a national need for electricity generating capacity, which includes capacity sourced from gas combustion;
- the need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit;
- the private loss to those affected is mitigated through the choice of the application land, and the limitation to the minimum extent possible of the rights and interests proposed to be acquired;
- the Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred;
- adequate and secure funding would be available to enable CA within the statutory period following the Order being made; and
- the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

- 9.1.3 However, I caveat my CA and TP findings in relation to the land of Mr Gerard Owen at Pickhill Farm subject to the Earthworm solar farm development. If a diversion of the gas connection alignment at that location cannot be agreed, or if agreed, the agreed diversion fails to obtain planning permission, I would still agree that my conclusions in 9.1.2 above would apply to that land. However, if a diversion is agreed and planning permission is granted for it, I do not accept that it is either necessary or appropriate to retain CA and TP powers over the un-diverted route that would now not be used. I have recommended a change to the DCO that would provide for CA and TP powers over that land to fall away, if those circumstances were to be met.
- 9.1.4 Considering all of the above factors together however, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans (as amended). I conclude that the Proposed Development would comply with s122(2) and s122(3) of PA2008.
- 9.1.5 For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the Secretary of State for Business, Energy and Industrial Strategy makes the Wrexham Gas Fired Generating Station Order in the form recommended at Appendix D to this report.

## APPENDICES

Page intentionally left blank

## **APPENDIX A: EVENTS IN THE EXAMINATION**

## Appendix A: Events in the Examination

The list below contains the main events which occurred, and procedural decisions taken, during the Examination.

Date	Examination Event
25 May 2016	<b>Unaccompanied Site Inspection (USI)</b>
26 May 2016	<b>Unaccompanied Site Inspection (USI)</b>
19 July 2016	<b>Preliminary Meeting (PM)</b>
19 July 2016	<b>Issue Specific Hearing (ISH) on the Draft Development Consent Order (DCO)</b>
2 August 2016	<b>Issue by Examining Authority (ExA) of:</b> <ul style="list-style-type: none"> <li>• Examination timetable</li> <li>• ExA's First Written Questions (FWQ)</li> </ul>
23 August 2016	<b>Deadline 1 (DL1)</b>  Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Summaries of all Relevant Representations (RR) exceeding 1500 words</li> <li>• Comments by the Applicant and any other Interested Parties (IP) on RRs</li> <li>• Written Representations (WRs) by all Interested Parties (IPs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Responses to ExA's First Written Questions (FWQ)</li> <li>• Local Impact Reports (LIR) from local authorities</li> <li>• Statements of Common Ground (SoCG) requested by ExA</li> <li>• Notification by statutory parties of wish to be considered as an IP</li> <li>• Notification by persons within certain categories of interests in land of their wish to become an IP</li> <li>• Notification by IPs of their wish to speak at an Issue Specific hearing (ISH) on the DCO</li> <li>• Notification by Affected Persons (AP) of their wish to speak at a Compulsory Acquisition Hearing (CAH)</li> </ul>

<b>Date</b>	<b>Examination Event</b>
	<ul style="list-style-type: none"> <li>• Notification by IPs of their wish to speak at an Open Floor Hearing (OFH)</li> <li>• Submissions from IPs or APs recommending locations or items for the itinerary for an Accompanied Site Inspection (ASI) and reasons for their inclusion</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>6 September 2016</b>	<p><b>Issue by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Notification of the date, time and place of the ASI</li> <li>• Notification of the date, time and place of the ISH into environmental and other issues</li> <li>• Notification of the date, time and place of the OFH</li> <li>• Notification of the date, time and place of the CAH</li> </ul>
<b>20 September 2016</b>	<p><b>Deadline 2 (DL2)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and any responses to comments on RRs</li> <li>• Comments on LIR</li> <li>• Comments on responses to ExA's First Written Questions (FWQs)</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>20 September 2016</b>	<p><b>Publication of:</b></p> <ul style="list-style-type: none"> <li>• ASI itinerary and hearing agendas</li> </ul>
<b>27 September 2016</b>	<b>Accompanied Site Inspection (ASI)</b>
<b>28 September 2016</b>	<b>Issue Specific Hearing (ISH) on the Draft DCO</b>
<b>28 September 2016</b>	<b>Issue Specific Hearing (ISH) on environmental and other issues</b>
<b>28 September 2016 (evening)</b>	<b>Open Floor Hearing (OFH)</b>
<b>28 September 2016</b>	<b>Unaccompanied Site Inspection (USI)</b>



<b>Date</b>	<b>Examination Event</b>
<b>29 September 2016</b>	<b>Compulsory Acquisition Hearing (CAH)</b>
<b>29 September 2016</b>	<b>Issue Specific Hearing (ISH) on environmental and other issues</b>
<b>6 October 2016</b>	<p><b>Deadline 3 (DL3)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 27 and 29 September 2016</li> <li>• Comments on any other documents submitted at Deadline 2 and not previously responded to</li> <li>• Applicant's revised draft DCO responding to matters and issues arising at hearings</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>21 October 2016</b>	<p><b>Issue by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• Second Written Questions (SWQs)</li> </ul>
<b>31 October 2016</b>	<p><b>Issue by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Notification of the date, time and place of the ASI</li> <li>• Notification of the date, time and place of the ISH on environmental and other issues</li> <li>• Notification of the date, time and place of the CAH</li> <li>• Notification of the date, time and place of the ISH on the draft DCO</li> </ul>
<b>4 November 2016</b>	<p><b>Deadline 4 (DL4)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExA's Second Written Questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>15 November 2016</b>	<p><b>Publication of:</b></p> <ul style="list-style-type: none"> <li>• ASI itinerary and hearing agendas</li> </ul>
<b>22 November 2016</b>	<b>Accompanied Site Inspection (ASI)</b>
<b>22 November 2016</b>	<b>Unaccompanied Site Inspection (USI)</b>

<b>Date</b>	<b>Examination Event</b>
<b>23 November 2016</b>	<b>Issue Specific Hearing (ISH) on environmental and other issues</b>
<b>23 November 2016</b>	<b>Unaccompanied Site Inspection (USI)</b>
<b>24 November 2016</b>	<b>Unaccompanied Site Inspection (USI)</b>
<b>24 November 2016</b>	<b>Compulsory Acquisition Hearing (CAH)</b>
<b>24 November 2016</b>	<b>Issue Specific Hearing (ISH) on the Draft Development Consent Order</b>
<b>25 November 2016</b>	<p><b>Deadline 5 (DL5)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to ExA's Second Written Questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>2 December 2016</b>	<p><b>Deadline 6 (DL6)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 22 and 24 November 2016</li> <li>• Comments on any other documents submitted at Deadline 5</li> <li>• A final preferred draft DCO from the Applicant</li> <li>• A final progress summary from the Applicant on any commercial agreements or related instruments necessary to support the DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>12 December 2016</b>	<p><b>Publication of:</b></p> <ul style="list-style-type: none"> <li>• Report on Implications for European Sites (RIES)</li> <li>• ExA commentary on the draft DCO</li> <li>• Request for further information and comments</li> </ul>
<b>4 January 2017</b>	<p><b>Deadline 7 (DL7)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the ExA's RIES</li> </ul>

<b>Date</b>	<b>Examination Event</b>
	<ul style="list-style-type: none"> <li>• Comments on the ExA's commentary on the DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>9 January 2017</b>	<p><b>Issue by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Request for further information and written comments (R17Q)</li> <li>• Notification of the an Examination timetable variation</li> </ul>
<b>12 January 2017</b>	<p><b>Deadline 8 (DL8)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the RIES</li> <li>• Comments on responses to the ExA's commentary on the DCO</li> <li>• Responses to the ExA's request for further information issued on 9 January 2017</li> </ul>
<b>17 January 2017</b>	<p><b>Deadline 9 (DL9)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's requests for further information as issued on 9 January 2017</li> </ul>
<b>18 January 2017</b>	<b>Unaccompanied Site Inspection (USI)</b>
<b>19 January 2017</b>	<b>Close of Examination</b>

## **APPENDIX B: EXAMINATION LIBRARY (INCLUDING THE RIES)**

# **Wrexham Energy Centre Examination Library**

**Updated –12/04/17**

This Examination Library relates to the Wrexham Energy Centre application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**EN010055 – Wrexham Energy Centre****Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<u>Application Documents</u>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the Examining Authority</u>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<u>Local Impact Reports</u>	LIR - xxx
<u>Additional Submissions</u>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<u>Events and Hearings</u>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<b><u>Representations – by Deadline</u></b>	
<u>Deadline 1:</u>  Deadline for receipt by ExA of:	REP1-xxx

- Summaries of all relevant representations (RR) exceeding 1500 words

- Comments by the applicant and any other interested parties on RRs

- Written representations (WRs) by all interested parties

All parties must submit their full written case and supporting evidence at this stage, as any representations to be heard at a hearing need to be based on RRs or WRs

- Summaries of all WRs exceeding 1500 words

- Responses to ExA's first written questions

- Local Impact Reports (LIR) from local authorities

- Statements of Common Ground (SoCG) requested by ExA

- Notification by statutory parties of wish to be considered as an interested party

- Notification by persons within certain categories of interests in land of their wish to become an interested party

- Notification by interested parties of their wish to speak at an issue specific hearing on the DCO

- Notification by affected persons of their wish to speak at a compulsory acquisition hearing

- Notification by interested parties of their wish to speak at an open floor hearing

- Submissions from interested parties or affected persons recommending locations or items for the itinerary for an accompanied site inspection and

<p>reasons for their inclusion</p> <ul style="list-style-type: none"> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
<p><u>Deadline 2:</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and any responses to comments on RRs</li> <li>• Comments on LIR</li> <li>• Comments on responses to ExA’s first written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p>REP2-xxx</p>
<p><u>Deadline 3:</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 27 and 29 September 2016</li> <li>• Comments on any other documents submitted at Deadline 2 and not previously responded to</li> <li>• Applicant’s revised draft DCO responding to matters and issues arising at hearings</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p>REP3-xxx</p>
<p><u>Deadline 4:</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExA’s second written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p>REP4-xxx</p>



<p><u>Deadline 5</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to ExA’s second written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p>REP5-xxx</p>
<p><u>Deadline 6</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 22 and 24 November 2016</li> <li>• Comments on any other documents submitted at Deadline 5</li> <li>• A final preferred draft DCO from the applicant</li> <li>• A final progress summary from the applicant on any commercial agreements or related instruments necessary to support the DCO</li> <li>• Any further information requested by the ExA for this deadline.</li> </ul>	<p>REP6-xxx</p>
<p><u>Deadline 7</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the ExA’s RIES (if required because a RIES is published)</li> <li>• Comments on the ExA’s consultation draft and/or commentary on the DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p>REP7-xxx</p>
<p><u>Deadline 8</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the RIES (if required because a RIES is published)</li> </ul>	<p>REP8-xxx</p>

<ul style="list-style-type: none"> <li>• Comments on responses to the ExA's consultation draft and/or commentary on the DCO</li> <li>• Any further information requested by the ExA for this deadline</li> <li>• Responses to the ExA's request for further information issued on 9 January 2017.</li> </ul>	
<p><u>Deadline 9</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's requests for further information as issued on 9 January 2017</li> </ul>	REP9-xxx
<p><u>Other Documents</u></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	OD-xxx

**EN010055 – Wrexham Energy Centre****Examination Library****Application Documents**

APP-001	<a href="#">1.1 WEC Application Form</a>
APP-002	<a href="#">1.2 WEC Copy of Newspaper Notices</a>
APP-003	<a href="#">2.1.1 WEC Location Plan</a>

**Plans**

APP-004	<a href="#">2.1.2 WEC Existing Site Layout Sheet 1 of 3</a>
APP-005	<a href="#">2.1.2 WEC Existing Site Layout Sheet 2 of 3</a>
APP-006	<a href="#">2.1.2 WEC Existing Site Layout Sheet 3 of 3</a>
APP-007	<a href="#">2.2 WEC Land Plans Including Crown Land</a>
APP-008	<a href="#">2.3 WEC Works Plan</a>
APP-009	<a href="#">2.4 WEC Access and Rights of Way Plan</a>
APP-010	<a href="#">2.5.1 WEC Illustrative Power Station Complex Site Layout Plan</a>
APP-011	<a href="#">2.5.2 WEC Illustrative Power Station Complex General Arrangement</a>
APP-012	<a href="#">2.5.3 WEC Illustrative Power Station Complex Northern and Western Elevations</a>
APP-013	<a href="#">2.5.4 WEC Illustrative Power Station Complex Eastern and Southern Elevations</a>
APP-014	<a href="#">2.5.5 WEC Illustrative Power Station Complex Isometric View</a>
APP-015	<a href="#">2.6 WEC Proposed foul and surface water drainage strategy</a>
APP-016	<a href="#">2.7.1 WEC Illustrative Gas and Electrical Connection Plans Sheet 1 of 3</a>
APP-017	<a href="#">2.7.2 WEC Illustrative Gas and Electrical Connection Plans Sheet 2 of 3</a>
APP-018	<a href="#">2.7.3 WEC Illustrative Gas and Electrical Connection Plans Sheet 3 of 3</a>
APP-019	<a href="#">2.8.1 WEC Existing Site and Illustrative Vegetation Loss Sheet 1 of 7</a>
APP-020	<a href="#">2.8.2 WEC Existing Site and Illustrative Vegetation Loss Sheet 2 of 7</a>
APP-021	<a href="#">2.8.3 WEC Existing Site and Illustrative Vegetation Loss Sheet 3 of 7</a>
APP-022	<a href="#">2.8.4 WEC Existing Site and Illustrative Vegetation Loss Sheet 4 of 7</a>
APP-023	<a href="#">2.8.5 WEC Existing Site and Illustrative Vegetation Loss Sheet 5 of 7</a>

APP-024	<a href="#">2.8.6 WEC Existing Site and Illustrative Vegetation Loss Sheet 6 of 7</a>
APP-025	<a href="#">2.8.7 WEC Existing Site and Illustrative Vegetation Loss Sheet 7 of 7</a>
APP-026	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 1 of 7</a>
APP-027	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 2 of 7</a>
APP-028	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 3 of 7</a>
APP-029	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 4 of 7</a>
APP-030	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 5 of 7</a>
APP-031	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 6 of 7</a>
APP-032	<a href="#">2.9.7 Illustrative Landscape within WEC Site Sheet 7 of 7</a>
<b>Development Consent Order (DCO)</b>	
APP-033	<a href="#">3.1 WEC Draft Development Consent Order</a>
APP-034	<a href="#">3.2 WEC Explanatory Memorandum to Draft Order for the WEC</a>
APP-035	<a href="#">4.1 WEC Statement of Reasons</a>
APP-036	<a href="#">4.2 WEC Funding Statement</a>
APP-037	<a href="#">4.3 WEC Book of Reference</a>
<b>Consultation Report</b>	
APP-038	<a href="#">5.1 WEC Consultation Report Appendix One</a>
APP-039	<a href="#">5.1 WEC Consultation Report FINAL</a>
APP-040	<a href="#">5.1 WEC Consultation Report Welsh Summary</a>
APP-041	<a href="#">5.2 WEC Planning Statement</a>
APP-042	<a href="#">5.3 WEC Design and Access Statement</a>
APP-043	<a href="#">5.4 WEC Level 2 Flood Consequence Assessment</a>
APP-044	<a href="#">5.5 WEC Statement of Statutory Nuisance</a>
APP-045	<a href="#">5.6 WEC Other Consents and Licences</a>
APP-046	<a href="#">5.7 WEC No Significant Effects Report</a>
<b>Environmental Statement (ES)</b>	
APP-047	<a href="#">6.1 WEC ES Volume 1 Non-Technical Summary (English)</a>

APP-048	<a href="#"><u>6.1 WEC ES Volume 1 Non-Technical Summary (Welsh)</u></a>
APP-049	<a href="#"><u>6.2.1 WEC ES Ch1 - Introduction</u></a>
APP-050	<a href="#"><u>6.2.2 WEC ES Ch2 - Planning and Legislative Context</u></a>
APP-051	<a href="#"><u>6.2.3 WEC ES Ch3 - Site selection alternatives and design evolution</u></a>
APP-052	<a href="#"><u>6.2.4 WEC ES Ch4 - The proposed development</u></a>
APP-053	<a href="#"><u>6.2.5 WEC ES Ch5 - The scope of the EIA and overall methodology</u></a>
APP-054	<a href="#"><u>6.2.6 WEC ES Ch6 - Socio-economics</u></a>
APP-055	<a href="#"><u>6.2.7 WEC ES Ch7 - Transport and traffic</u></a>
APP-056	<a href="#"><u>6.2.8 WEC ES Ch8 - Air quality</u></a>
APP-057	<a href="#"><u>6.2.9 WEC ES Ch9 - Noise and vibration</u></a>
APP-058	<a href="#"><u>6.2.10 WEC ES Ch10 - Landscape and visual</u></a>
APP-059	<a href="#"><u>6.2.11 WEC ES Ch11 - Ecology</u></a>
APP-060	<a href="#"><u>6.2.12 WEC ES Ch12 - Cultural Heritage</u></a>
APP-061	<a href="#"><u>6.2.13 WEC ES Ch13 - Ground conditions</u></a>
APP-062	<a href="#"><u>6.2.14 WEC ES Ch14 - The water environment</u></a>
APP-063	<a href="#"><u>6.2.15 WEC ES Ch15 - Waste</u></a>
APP-064	<a href="#"><u>6.2.16 WEC ES Ch16 - Land Use</u></a>
APP-065	<a href="#"><u>6.2.17 WEC ES Ch17 - Health Safety and Security</u></a>
APP-066	<a href="#"><u>6.2.18 WEC ES Ch18 - In-combination effects</u></a>
APP-067	<a href="#"><u>6.2.19 WEC ES Ch19 - Mitigation summary</u></a>
APP-068	<a href="#"><u>6.2.20 WEC ES Ch20 - Conclusions</u></a>
APP-069	<a href="#"><u>6.3.1 WEC ES CH01 Fig 1.1 Location Plan</u></a>
APP-070	<a href="#"><u>6.3.2 WEC ES CH04 Fig 4.1 Location Plan and Order Land</u></a>
APP-071	<a href="#"><u>6.3.2 WEC ES CH04 Fig 4.5 Env Constraints</u></a>
APP-072	<a href="#"><u>6.3.3 WEC ES CH05 Fig 5.1 Cumulative Effects</u></a>
APP-073	<a href="#"><u>6.3.4 WEC ES CH06 Fig 6.1 Wards</u></a>
APP-074	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.1 Study Area</u></a>

APP-075	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.2 PSC Construction Traffic Route</u></a>
APP-076	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.3 GC Construction Traffic Route</u></a>
APP-077	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.5 Traffic Survey Locations</u></a>
APP-078	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.6 PSC PIA Accident Plot</u></a>
APP-079	<a href="#"><u>6.3.5 WEC ES CH07 Fig 7.8 GC PIA Accident Plot</u></a>
APP-080	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.1 Air Quality Receptor Locations</u></a>
APP-081	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.2 Air Quality Monitoring Sites</u></a>
APP-082	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.4 Max annual mean N02</u></a>
APP-083	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.5 MAx hourly mean N02</u></a>
APP-084	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.6 Max 8 hourly CO</u></a>
APP-085	<a href="#"><u>6.3.6 WEC ES CH08 Fig 8.7 Max annual Nox</u></a>
APP-086	<a href="#"><u>6.3.7 WEC ES CH09 Fig 9.1 Noise sensitive receivers</u></a>
APP-087	<a href="#"><u>6.3.7 WEC ES Ch09 Fig 9.2 Noise survey locations</u></a>
APP-088	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.1a ZTV West</u></a>
APP-089	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.1b ZTV East</u></a>
APP-090	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.2a Topography West</u></a>
APP-091	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.2b Topography East</u></a>
APP-092	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.3a Landscape Character Areas west</u></a>
APP-093	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.3b Landscape Character Areas east</u></a>
APP-094	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.4a Photomontage VP locations west</u></a>
APP-095	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.4b Photomontage VP locations east</u></a>
APP-096	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.5 LVIA Rep VPS</u></a>
APP-097	<a href="#"><u>6.3.8 WEC ES CH10 Figure 10.6 Photomontages</u></a>
APP-098	<a href="#"><u>6.3.9 WEC ES CH11 Figure 11.1 statutory designations and study area</u></a>
APP-099	<a href="#"><u>6.3.9 WEC ES CH11 Figure 11.2 Non-statutory sites</u></a>
APP-100	<a href="#"><u>6.3.9 WEC ES CH11 Figure 11.3 Phase 1 Habitat Survey Plan</u></a>
APP-101	<a href="#"><u>6.3.9 WEC ES CH11 Figure 11.4 Study areas for Otter and water voles</u></a>
APP-102	<a href="#"><u>6.3.9 WEC ES CH11 Figure 11.5 Bat Roost Potential Trees</u></a>

APP-103	<a href="#">6.3.9 WEC ES CH11 Figure 11.6 Bat Activity Survey</a>
APP-104	<a href="#">6.3.10 WEC ES CH12 Figure 12.1 Designated Cultural Heritage Constraints</a>
APP-105	<a href="#">6.3.10 WEC ES Ch12 Figure 12.2 Non-designated heritage assets</a>
APP-106	<a href="#">6.3.11 WEC ES CH13 Figure 13.1 Location of former fibreglass factory</a>
APP-107	<a href="#">6.3.11 WEC ES CH14 Figure 14.1 Study Area</a>
APP-108	<a href="#">6.4.1 WEC ES CH05 Appendix 5.1 Scoping Opinion</a>
APP-109	<a href="#">6.4.1 WEC ES CH05 Appendix 5.2 Cumulative Assessment Tables</a>
APP-110	<a href="#">6.4.2 WEC ES CH07 Appendix 7.1 WCBC Correspondence</a>
APP-111	<a href="#">6.4.2 WEC ES CH07 Appendix 7.2 Base Traffic Data and Calculations</a>
APP-112	<a href="#">6.4.2 WEC ES CH07 Appendix 7.3 Accident data</a>
APP-113	<a href="#">6.4.2 WEC ES CH07 Appendix 7.4 Swept Path Analysis</a>
APP-114	<a href="#">6.4.2 WEC ES CH07 Appendix 7.5 CTMP</a>
APP-115	<a href="#">6.4.2 WEC ES CH07 Appendix 7.6 Transport Statement</a>
APP-116	<a href="#">6.4.3 WEC ES CH08 Appendix 8.1 Construction dust assessment methodology</a>
APP-117	<a href="#">6.4.3 WEC ES CH08 Appendix 8.2 Stack height sensitivity study</a>
APP-118	<a href="#">6.4.3 WEC ES CH08 Appendix 8.3 Correspondence</a>
APP-119	<a href="#">6.4.4 WEC ES CH09 Appendix 9.1 Guidance and equipment tables</a>
APP-120	<a href="#">6.4.4 WEC ES CH09 Appendix 9.2 Consultation</a>
APP-121	<a href="#">6.4.4 WEC ES CH09 Appendix 9.3 Baseline noise monitoring and contour map</a>
APP-122	<a href="#">6.4.5 WEC ES CH10 Appendix 10.1 Photomontage methodology</a>
APP-123	<a href="#">6.4.5 WEC ES CH10 Appendix 10.2 Night time assessment methodology</a>
APP-124	<a href="#">6.4.5 WEC ES CH10 Appendix 10.3 Landscape consultation</a>
APP-125	<a href="#">6.4.5 WEC ES CH10 Appendix 10.4 Landscape baseline</a>
APP-126	<a href="#">6.4.5 WEC ES CH10 Appendix 10.5 Visual baseline</a>
APP-127	<a href="#">6.4.5 WEC ES CH10 Appendix 10.6 Landscape effects</a>
APP-128	<a href="#">6.4.5 WEC ES CH10 Appendix 10.7 Visual effects</a>

APP-129	<a href="#"><u>6.4.5 WEC ES CH10 Appendix 10.8 Arboricultural impact assessment</u></a>
APP-130	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.1 Phase 1 Target Notes</u></a>
APP-131	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.2 Survey Data - Ban and GCN</u></a>
APP-132	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.3 Lesser Silver Water Beetle Survey</u></a>
APP-133	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.4 Ecology consultation</u></a>
APP-134	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.5 Draft Bat licence</u></a>
APP-135	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.6 Draft GCN license</u></a>
APP-136	<a href="#"><u>6.4.6 WEC ES CH11 Appendix 11.7 Biosecurity</u></a>
APP-137	<a href="#"><u>6.4.7 WEC ES CH12 Appendix 12.1 Heritage Gazetteer</u></a>
APP-138	<a href="#"><u>6.4.7 WEC ES CH12 Appendix 12.2 Archaeological baseline assessment</u></a>
APP-139	<a href="#"><u>6.4.7 WEC ES CH12 Appendix 12.3 Consultation</u></a>
APP-140	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.1 Assessment Tables</u></a>
APP-141	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.2 Envirocheck</u></a>
APP-142	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.3 Shepherd Gilmore Env Ltd Geo-Env Desk Study 2008 AM</u></a>
APP-143	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.4 SKM Enviros Acorn Power Phase 1 Desk Study 2010</u></a>
APP-144	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.5 SKM Enviros WPL Phase 1 Desk Study 2011</u></a>
APP-145	<a href="#"><u>6.4.8 WEC ES CH13 Appendix 13.6 Consultation</u></a>
APP-146	<a href="#"><u>6.4.9 WEC ES CH14 Appendix 14.1 WFD screening assessment</u></a>
APP-147	<a href="#"><u>6.4.9 WEC ES CH14 Appendix 14.2 Water environment consultation</u></a>
APP-148	<a href="#"><u>6.4.9 WEC ES CH14 Appendix 14.3 Foul and Surface Water Drainage Strategy</u></a>
APP-149	<a href="#"><u>6.4.10 WEC ES CH15 Appendix 15.1 Waste assumptions</u></a>
APP-150	<a href="#"><u>6.4.10 WEC ES CH15 Appendix 15.2 SWMP</u></a>
APP-151	<a href="#"><u>6.4.10 WEC ES CH15 Appendix 15.3 Consultation</u></a>
APP-152	<a href="#"><u>6.4.11 WEC ES CH19 Appendix 19.1 CEMP</u></a>
APP-153	<a href="#"><u>7.1 WEC Photos and Photomontages Report</u></a>
APP-154	<a href="#"><u>8.1 WEC Grid Connection Statement</u></a>



APP-155	<a href="#">8.2 WEC Gas Connection Statement</a>
APP-156	<a href="#">9.1 WEC Glossary</a>
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Cheshire West and Cheshire Council</a>
AoC-002	<a href="#">Denbighshire County Council</a>
AoC-003	<a href="#">Flintshire County Council</a>
AoC-004	<a href="#">Powys County Council</a>
AoC-005	<a href="#">Shropshire Council</a>
AoC-006	<a href="#">Wrexham County Borough Council</a>
<b>Relevant Representations</b>	
RR-001	<a href="#">Andrew Imrie</a>
RR-002	<a href="#">Mrs Barbara Pilson</a>
RR-003	<a href="#">Canal and River Trust</a>
RR-004	<a href="#">Charles Bellis</a>
RR-005	<a href="#">Christopher James Briggs</a>
RR-006	<a href="#">Clive Roberts</a>
RR-007	<a href="#">Dennis and Angela Edwards</a>
RR-008	<a href="#">Dwr Cymru /Welsh Water</a>
RR-009	<a href="#">Mrs Elizabeth Cross</a>
RR-010	<a href="#">Frank Lloyd</a>
RR-011	<a href="#">Grant Scott</a>
RR-012	<a href="#">Isycoed Community Council</a>
RR-013	<a href="#">Joanna Roberts</a>
RR-014	<a href="#">John Smith &amp; Susan Davies</a>
RR-015	<a href="#">John Graville</a>
RR-016	<a href="#">Joint Committee for the Clwydian Range and Dee Valley AONB</a>
RR-017	<a href="#">Jonathan Young</a>

RR-018	<u>JSM Construction (on behalf of FibreSpeed)</u>
RR-019	<u>Kathleen Briggs</u>
RR-020	<u>Kellogg Company of Great Britain Ltd</u>
RR-021	<u>L. C. Johnson</u>
RR-022	<u>Marian Hughes</u>
RR-023	<u>Martin Shea</u>
RR-024	<u>Megan Rathbone</u>
RR-025	<u>Michael Morris</u>
RR-026	<u>National Grid</u>
RR-027	<u>Natural England</u>
RR-028	<u>Natural Resources Body for Wales</u>
RR-029	<u>Nicola Vesty</u>
RR-030	<u>Public Health England</u>
RR-031	<u>Public Health Wales</u>
RR-032	<u>Robert J Eccleston</u>
RR-033	<u>Royal Mail Group Limited</u>
RR-034	<u>Sesswick Community Council</u>
RR-035	<u>SP Energy Networks</u>
RR-036	<u>Stephen Whitby</u>
RR-037	<u>Susan Harber</u>
RR-038	<u>Wales &amp; West Utilities Limited</u>
RR-039	<u>Welsh Government</u>
RR-040	<u>Rebecca Morgan on behalf of Economic Development Section of Wrexham County Borough Council</u>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<u>Post acceptance s51 advice</u>
PD-002	<u>Section 55 Acceptance of Applications Checklist</u>
PD-003	<u>Hysbysiad o benderfyniad i dderbyn cais am archwiliad</u> <i>Notification of Decision to Accept Application (Welsh)</i>

PD-004	<u>Notification of Decision to Accept Application</u>
PD-005	<u>Notice of the appointment of an Examining Authority</u>
PD-006	<u>Rule 6</u>
PD-007	<u>Note of Preliminary Meeting</u>
PD-008	<u>Rule 8</u>
PD-009	<u>Examining Authority's First Written Questions</u>
PD-009a	<u>Notification of Hearings and Accompanied Site Inspection for September 2016</u>
PD-010	<u>Notification of the Examining Authority's Second Written Questions</u>
PD-011	<u>Examining Authority's Second Written Questions</u>
PD-012	<u>Notification of Hearings and Accompanied Site Inspection for November 2016</u>
PD-013	<u>Rule 17 Letter</u>
PD-014	<u>Examining Authority's Request for Further Information</u>
PD-015	<u>Examining Authority's Commentary on the Draft Development Consent Order</u>
PD-016	<u>Report on the Implications for European Sites (RIES) issued by the Examining Authority on 12 December 2016</u>
PD-017	<u>Rule 17 and 8(3) Request for Further information</u>
PD-018	<u>Rule 17 Questions of 9 January 2017</u>
PD-019	<u>Notification of completion of ExA Examination</u>
<b>Local Impact Reports</b>	
LIR-001	<u>Wrexham County Borough Council- Draft Local Impact Report- Accepted at the discretion of the Examining Authority</u>
<b>Additional Submissions</b>	
AS-001	<u>Historic England- Response to the Rule 6 Letter of 24 June 2016. This was accepted at the discretion of the Examining Authority.</u>
AS-002	<u>Natural Resources Wales- Response to the Rule 6 Letter of 24 June 2016. This was accepted at the discretion of the Examining Authority.</u>
AS-003	<u>Rostons Limited on behalf of Frederick Ronald Done, T G Ellis, PB, J and SC Edwards- Update regarding clients land agreements with the Applicant - accepted at the discretion of the ExA</u>

AS-004	<a href="#">Wales and West Utilities - Update on negotiations with the Applicant in advance of the November hearings. This was accepted at the discretion of the Examining Authority</a>
AS-005	<a href="#">Clwyd Powys Archaeological Trust - Update on negotiations with the Applicant in advance of the November hearings. This was accepted at the discretion of the Examining Authority</a>
AS-006	<a href="#">Wrexham Power Limited - Letter in respect of the Compulsory Acquisition of rights over land owned by Mr Owen. This was accepted at the discretion of the Examining Authority</a>
AS-007	<a href="#">Chris Briggs - Emissions data for Deeside Power Station sourced from NRW. Accepted at the discretion of the Examining Authority</a>
<b>Events and Hearings</b>	
<b>Unaccompanied Site Inspection – 25 &amp; 26 May 2016</b>	
EV-001	<a href="#">Unaccompanied Site Inspection Note</a>
<b>Preliminary Meeting and Issue Specific Hearing on the draft Development consent Order – 19 July 2016</b>	
EV-002	<a href="#">Preliminary Meeting Audio (Part 1) - Audio of the Preliminary Meeting 19 July 2016</a>
EV-003	<a href="#">DCO Issue-Specific hearing - Audio (Part 1) - Audio of the Issue-Specific hearing on the draft DCO of 19 July 2016</a>
EV-004	<a href="#">DCO Issue-Specific hearing - Audio (Part 2) - Audio of the Issue-Specific hearing on the draft DCO of 19 July 2016</a>
EV-005	<a href="#">Wrexham Power Limited- Cover Letter for submissions following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO</a>
EV-006	<a href="#">Wrexham Power Limited- Written summary of oral case put at the Issue-Specific hearing on the draft DCO of 19 July 2016.</a>
EV-007	<a href="#">Wrexham Power Limited- Draft Development Consent Order (Comparison of Revision 0 and Revision 1). Submitted following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO</a>
EV-008	<a href="#">Wrexham Power Limited- Draft Development Consent Order (Revision 1). Submitted following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO.</a>
EV-009	<a href="#">Wrexham Power Limited- Land Plans including Crown Land (Revision 1). Submitted following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO</a>
EV-010	<a href="#">Wrexham Power Limited- Access Rights of Way Plan (Revision 1). Key Plan and Sheet 1 to 3. Submitted following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO.</a>
EV-011	<a href="#">Wrexham Power Limited- Note explaining the changes made to the Book of Reference and which are detailed in the document titled "Schedule of</a>

	<a href="#">Changes relating to the updated Book of Reference (Revision 1). Submitted following the Preliminary Meeting and the Issue-Specific hearing on the draft DCO.</a>
EV-012	<a href="#">Clive Roberts- Written summary of oral case put at the Issue-Specific hearing on the draft DCO of 19 July 2016.</a>
<b>Accompanied Site Inspection 27 September and Hearings on 28 and 29 September 2016</b>	
EV-013	<a href="#">Accompanied Site Inspection itinerary and Hearing Agendas.</a>
EV-014	<a href="#">Note of the second Unaccompanied Site Inspection on 28 September 2016</a>
<b>Issue Specific Hearing on the Draft Development Consent Order – 28 September 2016</b>	
EV-015	<a href="#">Audio of the Draft Development Consent Order Hearing (Part 1)</a>
EV-016	<a href="#">Audio of the Draft Development Consent Order Hearing (Part 2)</a>
<b>Issue Specific Hearing into Environment and Other Issues – 28 and 29 September 2016</b>	
EV-017	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues (Part 1)</a>
EV-018	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues (Part 2)</a>
EV-019	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues (Part 3)</a>
EV-020	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues (Part 4)</a>
EV-021	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues (Part 5)</a>
<b>Open Floor Hearing – 28 September 2016</b>	
EV-022	<a href="#">Audio of the Open Floor Hearing</a>
<b>Compulsory Acquisition Hearing – 29 September 2016</b>	
EV-023	<a href="#">Audio of the Compulsory Acquisition Hearing (Part 1)</a>
EV-024	<a href="#">Audio of the Compulsory Acquisition Hearing (Part 2)</a>
<b>Accompanied Site Inspection 22 November and Hearings on 23 and 24 November 2016</b>	
EV-025	<a href="#">Accompanied Site Inspection Itinerary and Agendas</a>
<b>Unaccompanied Site Inspection – Undertaken between 22 and 24 November 2016</b>	

EV-026	<a href="#">Unaccompanied Site Inspection Note - The ExA's note of their unaccompanied site inspection undertaken 22 November 2016</a>
EV-027	<a href="#">Unaccompanied Site Inspection Note - The ExA's note of their unaccompanied site inspection undertaken 23 and 24 November 2016</a>
<b>Issue Specific Hearing into Environment and Other Issues – 23 November 2016</b>	
EV-028	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues of 23 November 2016 (Part 1)</a>
EV-029	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues of 23 November 2016 (Part 2)</a>
EV-030	<a href="#">Audio of the Issue Specific Hearing on the Environment and Other Issues of 23 November 2016 (Part 3)</a>
<b>Compulsory Acquisition Hearing – 24 November 2016</b>	
EV-031	<a href="#">Audio of the Compulsory Acquisition Hearing of 24 November 2016</a>
<b>Issue Specific Hearing on the Draft Development Consent Order – 24 November 2016</b>	
EV-032	<a href="#">Audio of the DCO Issue Specific Hearing on the Draft DCO of 24 November 2016 (Part 1)</a>
EV-033	<a href="#">Audio of the DCO Issue Specific Hearing on the Draft DCO of 24 November 2016 (Part 2)</a>
<b>Unaccompanied Site Inspection – Undertaken 18 January 2017</b>	
EV-034	<a href="#">Unaccompanied Site Inspection Note - The ExA's note of their unaccompanied site inspection undertaken 18 January 2017</a>
<b>Representations</b>	
<b>Deadline 1 – 25 August 2016</b>	
REP1-001	<a href="#">Chris Briggs - Written Representation</a>
REP1-002	<a href="#">Clive Roberts - Written Representation</a>
REP1-003	<a href="#">Dennis and Angela Edwards - Written Representation</a>
REP1-004	<a href="#">Earthworm Energy Plc Ltd - Written Representation</a>
REP1-005	<a href="#">Joanna Roberts - Written Representation</a>
REP1-006	<a href="#">Jonathan and Tasmin Young - Written Representation</a>
REP1-007	<a href="#">John Smith and Susan Davies - Written Representation</a>
REP1-008	<a href="#">Kath Briggs - Written Representation</a>
REP1-009	<a href="#">Kellogg Company of Great Britain - Written Representation</a>

REP1-010	<u>Mark Harber - Written Representation - Accepted at the discretion of the Examining Authority</u>
REP1-011	<u>Marian Hughes - Written Representation</u>
REP1-012	<u>Michael Morris - Response to the ExA's First Written Question 1.1.1</u>
REP1-013	<u>Michael Morris - Written Representation</u>
REP1-014	<u>Natural England- Response to the ExA's First Written Questions and Written Representation</u>
REP1-015	<u>Natural Resources Wales- Response to the ExA's First Written Questions and Written Representation</u>
REP1-016	<u>National Grid Gas - Written Representation</u>
REP1-017	<u>North Wales Wildlife Trust - Written Representation - Accepted at the discretion of the Examining Authority</u>
REP1-018	<u>Public Health Wales - Response to the ExA's First Written Question 1.13.1</u>
REP1-019	<u>Robert Eccleston - Written Representation</u>
REP1-020	<u>Rostons Limited on behalf of Fredrick Ronald Done, TG Ellis and Mr Edwards - Written Representation</u>
REP1-021	<u>SP Energy Networks - Written Representations</u>
REP1-022	<u>Stephen Whitby - Written Representation</u>
REP1-023	<u>Susan Harber - Request for an Open Floor Hearing and Written Representation</u>
REP1-024	<u>Susan Harber - Request for a Site Inspection</u>
REP1-025	<u>Wales and West Utilities - Response to the ExA's First Written Questions</u>
REP1-026	<u>Wales and West Utilities - Written Representation</u>
REP1-027	<u>Welsh Government- Response to the ExA's First Written Questions</u>
REP1-028	<u>Welsh Water - Written Representation</u>
REP1-029	<u>Wrexham County Borough Council - Written Representation</u>
REP1-030	<u>Wrexham Power Limited - Covering Letter</u>
REP1-031	<u>Wrexham Power Limited - Site Visit Itinerary</u>
REP1-032	<u>Wrexham Power Limited - Response to the ExA's First Written Questions</u>
REP1-033	<u>Wrexham Power Limited -Appendices to the Response to the ExA's First Written Questions</u>
REP1-034	<u>Wrexham Power Limited - Update on Statements of Common Ground</u>

REP1-035	<u>Wrexham Power Limited - Response to Relevant Representations</u>
REP1-036	<u>Wrexham Power Limited - Site visit location plans</u>
<b>Late Submissions</b>	
REP1-037	<u>Chris Briggs - Response to the ExA's First Written Question 1.1.13 - Late Submission accepted at the discretion of the ExA</u>
REP1-038	<u>Chris Briggs - Response to the ExA's First Written Question 1.13.4 - Late Submission accepted at the discretion of the ExA</u>
REP1-039	<u>Wrexham Power Limited - Updated position on Statements of Common Ground - Late Submission accepted at the discretion of the ExA</u>
<b>Deadline 2 – 20 September 2016</b>	
REP2-001	<u>Chris Briggs - Comments on the Accompanied Site Inspection</u>
REP2-002	<u>Jonathan Young - Written submission in advance of the September Hearings</u>
REP2-003	<u>Natural England - Response to the ExA's First Written Questions: Section 1.2 – Biodiversity</u>
REP2-004	<u>Natural Resources Wales – Response to the ExA's First Written Questions</u>
REP2-005	<u>Wrexham County Borough Council - Update on the Local Impact Report</u>
REP2-006	<u>Wrexham Power Limited - Covering Letter for Deadline 2 submissions</u>
REP2-007	<u>Wrexham Power Limited - Land Plans (Revision 2)</u>
REP2-008	<u>Wrexham Power Limited - Access Right of Way Plan (Revision 2)</u>
REP2-009	<u>Wrexham Power Limited - Comments on responses to the ExA's First Written Questions</u>
REP2-010	<u>Wrexham Power Limited - Response to Written Representations</u>
REP2-011	<u>Wrexham Power Limited - Objections Schedule - Response to the ExA's First Written Questions- 1.4.4 and 1.4.6</u>
REP2-012	<u>Wrexham Power Limited - Draft Development Consent Order (Revision 2)</u>
REP2-013	<u>Wrexham Power Limited - Draft Development Consent Order - Comparison version of Revision 1 and Revision 2</u>
REP2-014	<u>Wrexham Power Limited - Response to the Local Impact Report prepared by Wrexham County Borough Council</u>
REP2-015	<u>Wrexham Power Limited - Addendum to the Environmental Statement: Cumulative Effects Assessment – Electrical Connection</u>
REP2-016	<u>Wrexham Power Limited - Statement of Common Ground on the historic</u>



	<u>environment between the Welsh Government/ Cadw and Wrexham Power Limited</u>
REP2-017	<u>Wrexham Power Limited - Position paper on common ground between Natural Resource Wales and Wrexham Power Limited.</u>
REP2-018	<u>Wrexham Power Limited - Updated Construction Environmental Management Plan (Revision 1)</u>
REP2-019	<u>Wrexham Power Limited - Flood Consequence Assessment</u>
<b>Deadline 3 – 06 October 2016</b>	
REP3-001	<u>Chris Briggs - Written summary of oral submissions put at hearings held between 27 and 29 September 2016</u>
REP3-002	<u>Elizabeth Cross - Representation following the hearings held between 27 and 29 September 2016</u>
REP3-003	<u>Dennis and Angela Edwards - Written summaries of oral submissions put at hearings held between 27 and 29 September 2016</u>
REP3-004	<u>Faye Green on behalf of St. Pauls School - Representation following the hearings held between 27 and 29 September 2016</u>
REP3-005	<u>Kath Briggs - Written summary of oral submission made on 28 September 2016</u>
REP3-006	<u>Kellogg Company of Great Britain - Comments on the Applicant's response to Kellogg's Written Representation.</u>
REP3-007	<u>Michael Morris - Written summaries of oral submissions put at hearings held between 27 and 29 September 2016</u>
REP3-008	<u>Natural Resources Wales - Written summaries of oral submissions put at hearings held between 27 and 29 September 2016</u>
REP3-009	<u>Robert Eccleston - Written summaries of oral submissions put at hearings held between 27 and 29 September 2016</u>
REP3-010	<u>Susan Harber - Written summary of oral submission made on 28 September 2016</u>
REP3-011	<u>Wrexham Power Limited - Covering letter for Deadline 3 representations</u>
REP3-012	<u>Wrexham Power Limited - Draft Development Consent Order (Revision 3)</u>
REP3-013	<u>Wrexham Power Limited - Comparison version of Revision 2 and Revision 3 of the Draft Development Consent Order</u>
REP3-014	<u>Wrexham Power Limited -Written summary of oral case put at the Issue Specific hearing on Environmental and Other Issues on 28 September 2016</u>

REP3-015	<u>Wrexham Power Limited - Written summary of oral case put at the Issue Specific hearing on Environmental and Other Issues on 29 September 2016</u>
REP3-016	<u>Wrexham Power Limited - Written summary of oral submissions put at the Issue Specific hearing on the Draft Development Consent Order</u>
REP3-017	<u>Wrexham Power Limited - Written summary of oral submission put at the Compulsory Acquisition Hearing</u>
REP3-018	<u>Wrexham Power Limited - Distances from Stacks Plan</u>
REP3-019	<u>Wrexham Power Limited - Photographs of Owens Corning Structures</u>
REP3-020	<u>Wrexham Power Limited - Distances from Power Station Complex Plan</u>
REP3-021	<u>Wrexham Power Limited - Composite Kingmoor Park and Power Station Complex Plan</u>
REP3-022	<u>Joanna Roberts - Written summary of oral submissions put at the Issue Specific hearing on Environmental and Other Issues held on 28 and 29 September 2016</u>
REP3-023	<u>Joanna Roberts - Update to Deadline 3 submission (REP3-022) - accepted at the discretion of the ExA on 20 October 2016</u>
<b>Deadline 4 – 04 November 2016</b>	
REP4-001	<u>Chris Briggs - Representation about stack and noise emissions</u>
REP4-002	<u>Kellogg Company of Great Britain Limited- Response to the ExA's Second Written Questions</u>
REP4-003	<u>Natural England - Response to the ExA's Second Written Questions</u>
REP4-004	<u>Natural Resources Wales - Response to the ExA's Second Written Questions</u>
REP4-005	<u>Welsh Water - Response to ExA's Second Written Questions</u>
REP4-006	<u>Wrexham County Borough Council - Response to ExA's Second Written Questions.</u>
REP4-007	<u>Wrexham Power Limited - Covering letter for Deadline 4 submissions</u>
REP4-008	<u>Wrexham Power Limited - Response to the ExA's Second Written Questions</u>
REP4-009	<u>Wrexham Power Limited - Comments on submissions made at Examination Deadline 3</u>
REP4-010	<u>Wrexham Power Limited - Objection Schedule (Revision 2)</u>
REP4-011	<u>Wrexham Power Limited - Draft Development Consent Order (Revision 4)</u>

REP4-012	<u>Wrexham Power Limited - Comparison version of Revision 3 and Revision 4 of the Draft Development Consent Order</u>
REP4-013	<u>Wrexham Power Limited - Update regarding the Draft Development Consent Order following the Compulsory Acquisition Hearing held on 29 September 2016</u>
REP4-014	<u>Wrexham Power Limited - Updated Book of Reference (Revision 2)</u>
REP4-015	<u>Wrexham Power Limited - Book of Reference - comparison version of Revision 1 and Revision 2</u>
REP4-016	<u>Wrexham Power Limited - Environmental Statement Appendix: Foul and Surface Water Drainage Strategy - Revision 1</u>
REP4-017	<u>Wrexham Power Limited -Comparison version of Revision 0 and Revision 1 of the Environmental Statement Appendix: Foul and Surface Water Drainage Strategy</u>
REP4-018	<u>Wrexham Power Limited - Environmental Statement Appendix: Construction Environmental Management Plan (Revision 2)</u>
REP4-019	<u>Wrexham Power Limited - Comparison version of Revision 1 and Revision 2 of Environmental Statement Appendix: Construction Environmental Management Plan</u>
REP4-020	<u>Wrexham Power Limited - Landscape and Visual Impact Assessment Photomontage Report</u>
REP4-021	<u>Wrexham Power Limited - Water Framework Directive Report</u>
REP4-022	<u>Wrexham Power Limited - Land Plans - Late Submission accepted at the discretion of the ExA</u>
<b>Deadline 5 – 25 November 2016</b>	
REP5-001	<u>Natural Resources Wales - Further Response to the ExA's Second Written Questions</u>
REP5-002	<u>Wrexham Power Limited - Comments on submissions made at Deadline 4</u>
<b>Deadline 6 – 2 December 2016</b>	
REP6-001	<u>Chris Briggs - Freedom of Information request sent to Natural Resources Wales</u>
REP6-002	<u>Chris Briggs - Combined Cycle Gas Turbine Emission Plumes</u>
REP6-003	<u>Natural Resources Wales - Response to Deadline 6 - Covering Letter</u>
REP6-004	<u>Natural Resources Wales - Annex A - Summary of Oral Representations made at the Issue Specific hearing on Environmental and Other Issues of 23 November 2016</u>

REP6-005	<a href="#">Natural Resources Wales - Annex B - Answers to questions asked by the ExA at the Issue Specific hearing on Environmental and Other Issues held on 23 November 2016</a>
REP6-006	<a href="#">Natural Resources Wales - Freedom of information request from Mr Briggs and Natural Resources Wales' response</a>
REP6-007	<a href="#">Wrexham Power Limited - Joint statement between solicitors for the Applicant and solicitors for Mr Owen</a>
REP6-008	<a href="#">Wrexham Power Limited - Signed Statement of Common Ground between the Applicant and Natural Resources Wales</a>
REP6-009	<a href="#">Wrexham Power Limited - Written summary of oral submissions put at the Issue Specific hearing on the Environment and Other Issues held on 23 November 2016</a>
REP6-010	<a href="#">Wrexham Power Limited - Written summary of oral submissions put at the Compulsory Acquisition Hearing held on 24 Nov 2016</a>
REP6-011	<a href="#">Wrexham Power Limited - Written summary of oral submissions put at the Issue Specific hearing on the Draft Development Consent Order held on 24 Nov 2016</a>
REP6-012	<a href="#">Wrexham Power Limited - Draft Development Consent Order (Revision 5)</a>
REP6-013	<a href="#">Wrexham Power Limited - Comparison version of Revision 4 and Revision 5 of the Draft Development Consent Order</a>
<b>Late Submission</b>	
REP6-014	<a href="#">Joanna Roberts – Written representation following the Issue Specific hearing on the Environment and Other Issues held on 23 November 2016- Late Submission accepted at the discretion of the ExA</a>
<b>Deadline 7 – 4 January 2017</b>	
REP7-001	<a href="#">Earthworm Energy Plc - Response to Rule 17 letter dated 12 December 2016</a>
REP7-002	<a href="#">Kellogg Company of Great Britain Limited - Response to Rule 17 letter dated 12 December 2016</a>
REP7-003	<a href="#">National Grid Gas Plc - Update on the protective provisions submitted by the Applicant in the draft Development Consent Order at deadline 6</a>
REP7-004	<a href="#">Natural Resources Wales - Response to Rule 17 letter dated 12 December 2016</a>
REP7-005	<a href="#">Rostons Limited on behalf of Frederick Ronald Done, T G Ellis, PB, J and SC Edwards - Response to Rule 17 letter dated 12 December 2016</a>
REP7-006	<a href="#">Wales and West Utilities - Response to Rule 17 letter dated 12 December 2016</a>

REP7-007	<u>Wrexham County Borough Council - Response to Rule 17 letter dated 12 December 2016</u>
REP7-008	<u>Wrexham Power Limited - Covering letter for Deadline 7 representations</u>
REP7-009	<u>Wrexham Power Limited - Response to Rule 17 letter dated 12 December 2016</u>
REP7-010	<u>Wrexham Power Limited - Responses to ExA's comments on the Draft Development Consent Order</u>
REP7-011	<u>Wrexham Power Limited - Draft Development Consent Order (Revision 6)</u>
REP7-012	<u>Wrexham Power Limited - Comparison version of Revision 5 and Revision 6 of the Draft Development Consent Order</u>
REP7-013	<u>Wrexham Power Limited - Land Plans including Crown Land (Revision 4)</u>
REP7-014	<u>Wrexham Power Limited - Schedule of changes to the Land Plans</u>
REP7-015	<u>Wrexham Power Limited - Schedule of changes relating to the updated Book of Reference</u>
REP7-016	<u>Wrexham Power Limited - Explanatory Memorandum to Draft Development Consent Order</u>
REP7-017	<u>Wrexham Power Limited - Comparison version of Revision 0 and Revision 1 of the Draft Development Consent Order Explanatory Memorandum</u>
REP7-018	<u>Wrexham Power Limited - Statement of Common Ground between Wrexham Power Limited and Wrexham County Borough Council</u>
<b>Late Submission</b>	
REP7-019	<u>Chris Briggs - Response to Rule 17 letter dated 12 December 2016- Late Submission accepted at the discretion of the ExA</u>
<b>Deadline 8 – 12 January 2017</b>	
REP8-001	<u>National Grid Gas plc - Withdrawing representations in respect of the Application</u>
REP8-002	<u>Natural England - Response to Deadlines 7 and 8</u>
REP8-003	<u>Wales and West Utilities - Response to the Deadline 8 Questions and associated plan</u>
REP8-004	<u>Susan Harber - Copy of BBC News article dated 9 January 2017</u>
REP8-005	<u>Wrexham Power Limited - Covering letter for Deadline 8 representations</u>
REP8-006	<u>Wrexham Power Limited - Responses to the Examining Authority request for further information (including responses to questions issued on 9 January 2017 and responses to representations from Interested Parties at Deadline 7)</u>

REP8-007	<u>Wrexham Power Limited - Updated Book of Reference (Revision 3)</u>
REP8-008	<u>Wrexham Power Limited - Book of Reference - comparison version of Revision 2 and Revision 3</u>
REP8-009	<u>Wrexham Power Limited - Schedule of Changes relating to the updated Book of Reference (Revision 3)</u>
REP8-010	<u>Wrexham Power Limited - Response to Chris Briggs late response to Rule 17 letter dated 12 December 2016</u>
<b>Deadline 9 – 17 January 2017</b>	
REP9-001	<u>Welsh Government - Response to the Examining Authority's request for further information</u>
REP9-002	<u>Wrexham County Borough Council - Response to the Examining Authority's request for further information</u>
REP9-003	<u>Wrexham Power Limited - Covering letter for Deadline 9 representations</u>
REP9-004	<u>Wrexham Power Limited - Response to representations made at Deadline 8</u>
REP9-005	<u>Wrexham Power Limited - Response to Chris Briggs Deadline 7 submission</u>
REP9-006	<u>Wrexham Power Limited - 2.2 Land Plans including Crown Land (Revision 5)</u>
REP9-007	<u>Wrexham Power Limited - Draft Development Consent Order (Revision 7)</u>
REP9-008	<u>Wrexham Power Limited - Explanatory Memorandum to Draft Development Consent Order (Revision 2)</u>
REP9-009	<u>Wrexham Power Limited - Comparison version of Revision 1 and Revision 2 of the Explanatory Memorandum</u>
<b>Other Documents</b>	
OD-001	<u>Wrexham Power Limited- Covering letter enclosing certificates of compliance and Schedule of changes relating to the Updated Book of Reference</u>
OD-002	<u>Wrexham Power Limited- Schedule of changes relating to the Updated Book of Reference- Submitted with the certificates</u>
OD-003	<u>Wrexham Power Limited- Updated Book of Reference (Clean version) - Submitted with the certificates</u>
OD-004	<u>Wrexham Power Limited – Updated Book of Reference (Tracked Change version) - Submitted with the certificates</u>
OD-005	<u>Wrexham Power Limited- Certificates of compliance with s56 and s59 of the Planning Act 2008 and Regulation 13 of the Infrastructure Planning</u>

	<u>(Environmental Impact Assessment) Regulations</u>
OD-006	<u>Wrexham Power Limited- Grid Connection Statement- Revision 1</u>
OD-007	<u>Wrexham Power Limited- Grid Connection Statement- Revision 1 (Tracked Change Version)</u>
OD-008	<u>Regulation 24- Transboundary Screening document</u>
OD-009	<u>Wrexham County Borough Council - Pre-examination Correspondence Clarifying RR-040.<sup>1</sup></u>

---

<sup>1</sup> This communication was received before the Preliminary Meeting. As pre-examination correspondence, it was at that time considered on an administrative basis only. It clarified that this was a representation from the Economic Development Team. It was used to adjust the published title of RR-040 to reflect that rather than representing the views of the council as a whole, it was a representation from the Economic Development Team. It is published now to confirm that position

## **APPENDIX C: LIST OF ABBREVIATIONS**



## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
AQD	Air Quality Directive
ASI	Accompanied Site Inspection
BEIS	(Department for) Business, Energy and Industrial Strategy
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
Cadw	The Welsh Government's historic environment service
CEMP	Construction Environmental Management Plan
CO	Carbon Monoxide
CO <sub>2</sub>	Carbon Dioxide
CoMAH	Control of Major Accident Hazards
CNI	Critical National Infrastructure
CPNI	Centre for the Protection of National Infrastructure
CRoW	Countryside Right of Way Act 1974
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Former Department of Energy and Climate Change
DL(number)	Examination Deadline (see Appendix A for a list)
DNO	Distribution Network Operator
EA	Environment Agency
EA1995	Environment Act 1995
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
EM	Explanatory Memorandum
EMF	Electro Magnetic Field
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FS	Funding Statement
FWQ	First Written Question
HRA	Habitat Regulations Assessment
HSE	Health and Safety Executive
IP	Interested Party
ISH	Issue Specific Hearing
km	kilometre
kV	Kilovolts
LDP	Local Development Plan
LIR	Local Impact Report
m	Metres
MPs	Model Provisions
MW / MWe	Megawatt(s) / Megawatt(s) equivalent
NE	Natural England

<b>Abbreviation or usage</b>	<b>Reference</b>
NERC	Natural Environment and Rural Communities
NOx	Oxides of Nitrogen
NPS	National Policy Statement
NRW	Natural Resources Wales
NSER	No Significant Effect Report
NSIP	Nationally Significant Infrastructure Project
PA2008	Planning Act 2008 (as amended)
PM	Preliminary Meeting
PM <sub>10</sub> / PM <sub>2.5</sub>	Particulate Matter of the defined dimension in micrometres (µm)
PPW	Planning Policy Wales
R	Requirement
Ramsar	The Ramsar Convention on Wetlands
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SNCB(s)	Statutory Nature Conservation Body(ies)
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SP Manweb	Scottish Power Manweb (see SPEN)
SPEN	Scottish Power Energy Networks
SSN	Statement of Statutory Nuisance
SSSI	Sites of Special Scientific Interest
SWMP	Site Waste Management Plan
SWQ	Second Written Questions
TAN	Technical Advice Note
TCPA1990	Town and Country Planning Act 1990 (as amended)
TP	Temporary Possession
UDP	Unitary Development Plan
USI	Unaccompanied Site Inspection
WCBC	Wrexham County Borough Council
WFD	Water Framework Directive
WIE	Wrexham Industrial Estate
WR	Written Representation
WW	Welsh Water / Dwr Cymru

## **APPENDIX D: RECOMMENDED DCO**

**201X No. XXX**

**INFRASTRUCTURE PLANNING**

**The Wrexham Gas Fired Generating Station Order 201[X]**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2**

**PRINCIPAL POWERS**

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Operation of authorised development
6. Benefit of this Order
7. Consent to transfer benefit of this Order
8. Defence to proceedings in respect of statutory nuisance

**PART 3**

**STREETS**

9. Power to alter layout, etc. of streets
10. Street works
11. Temporary prohibition or restriction of use of streets
12. Access to works
13. Agreements with street authorities
14. Traffic Regulation

**PART 4**

**SUPPLEMENTAL POWERS**

15. Discharge of water
16. Authority to survey and investigate the land

PART 5  
POWERS OF ACQUISITION

17. Compulsory acquisition of land
18. Compulsory acquisition of rights etc.
19. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
20. Time limit for exercise of authority to acquire land compulsorily
21. Statutory authority to override easements and other rights
22. Acquisition of subsoil only
23. Acquisition of part of certain properties
24. Private rights
25. Rights under or over streets
26. Temporary use of land for carrying out the authorised development
27. Temporary use of land for maintaining the authorised development
28. Statutory Undertakers
29. Apparatus and rights of statutory undertakers in streets
30. Recovery of costs of new connection

PART 6  
MISCELLANEOUS AND GENERAL

31. Felling or lopping of trees and removal of hedgerows
32. Application of landlord and tenant law
33. Operational land for purposes of the 1990 Act
34. Protective provisions
35. Certification of plans etc.
36. Service of notices
37. Procedure in relation to certain approvals
38. Arbitration
39. Funding

---

SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
- SCHEDULE 2 — DOCUMENTS AND PLANS TO BE CERTIFIED
- SCHEDULE 3 — REQUIREMENTS
- SCHEDULE 4 — STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT
- SCHEDULE 5 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 6 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS
- SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS
- SCHEDULE 8 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 9 — PROTECTIVE PROVISIONS

- PART 1 — FOR THE PROTECTION OF NATIONAL GRID
- PART 2 — FOR THE PROTECTION OF BT GROUP PLC
- PART 3 — FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG
- PART 4 — FOR THE PROTECTION OF OPERATORS OF  
ELECTRONIC COMMUNICATIONS CODE NETWORKS
- PART 5 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER  
AND SEWERAGE UNDERTAKERS
- PART 6 — FOR THE PROTECTION OF WALES AND WEST  
UTILITIES
- PART 7 — FOR THE PROTECTION OF THE SOLAR OPERATOR
- SCHEDULE 10 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application under section 37 of the Planning Act 2008<sup>(a)</sup> (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(b)</sup>. The single appointed person has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application [on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application].

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115 and 120 of the 2008 Act, makes the following Order—

---

(a) 2008 c.29.

(b) S.I. 2010/103, amended by S.I. 2012/635.

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Wrexham Gas Fired Generating Station Order 201[\*] and comes into force on [\*\*].

### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

- 
- (a) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Sections 7, 9, 12, and 22, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); Section 8 was amended by paragraphs 62(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 9 was also amended by section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34) and paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); Section 11 was amended by paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, section 3 and Schedule 1 Part 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 12 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 12(3) was also amended by section 56(2) and Part I of Schedule 9 to the Courts Act 1971 (c.23); Section 13 was amended by section 139 (5), (6), (7), (8), (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); Section 20 was amended by paragraph 4 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 22 was also excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12) and modified by paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34). Paragraph 2 of Schedule 2 was also modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c.72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c.18).
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

“the 1984 Act” means the Road Traffic Regulation Act 1984(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2008 Act” means the Planning Act 2008(d);

“access rights of way plan” means the plan identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the access rights of way plan by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

- 
- (a) 1984 c.27. Section 1 was amended by section 45 of the Local Transport Act 2008 (c.26) and paragraph 7 of Schedule 11 to the Transport Act 2000 (c.38). Section 9 was amended by paragraphs 23(2), (3) and (4) of Schedule 8 (II) to the New Roads and Streets Works Act 1991 (c.22), paragraph 24 of Schedule 4 to the Road Traffic Act 1991 (c.40) and sections 1, 2 and 8(1) and paragraph 5(4) of Schedule 5 to the Local Government Act 1985 (c.51); and Section 22BB was amended by section 72 of the Natural Environment and Rural Communities Act 2006 (c.16).
- (b) 1990 c.8. Section 56 was amended by paragraph 10(1) and (2) of Schedule 7 and paragraph 10 of Schedule 6 to the Planning and Compensation Act 1991 (c.34), paragraph 2(a) and (b) of Schedule 12 to the Localism Act 2011 (c.20) and section 40(2)(a) of the Planning and Compulsory Purchase Act 2004 (c.5).
- (c) 1991 c.22. Section 48 was amended by section 142(2) of the Local Transport Act 2008 (c.26); Section 50 was amended by section 124(3) of the Local Transport Act 2008 (c.26); Section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 54 was amended by the transitional provisions specified in article 6(1)-(3) and (5) of SI 2007/3174 and by section 49(1) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 55 was amended by section 51(9) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and subject to transitional provisions specified in article 6(4) and (5) of SI 2007/3174 and section 49(2) of the Traffic Management Act 2004 (c.18); Section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 (c.18); Section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890, article 5 of SI 2007/3174 and to Section 44 of the Traffic Management Act 2004 (c.18); Section 57 was amended by section 52(3) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174, article 6 of SI 2007/1890, and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890, article 8 in 2007/3174 and section 52(1) of the Traffic Management Act 2004 (c.18); Section 59 was amended by section 42 of Traffic Management Act 2004 (c.18); Section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 64 was amended by section 52(4) of the Traffic Management Act 2004 (c.18) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 (c.40); Section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) and by section 40(3) of that same Act; Section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 74 was amended by sections 256(3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38) and by sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18); Section 74A was amended by section 255(1) of the Transport Act 2000 (c.38) and section 40(4) of the Traffic Management Act 2004 (c.18); Section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); Section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); Section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); Section 94 was amended by paragraph 32(1) of Schedule 7(1) to the Local Government (Wales) Act 1994 (c.19); Section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890, article 3 of SI 2007/3174 and by section 41(1) of the Traffic Management Act 2004 (c.18); Section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18). There are other amendments to the 1991 Act which are not relevant to this Order.
- (d) 2008 c.29. Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645; Section 37 was amended by paragraph 5(2) and (3) and section 137(5) of the Localism Act 2011 (c.20); Section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20); Section 104 was amended by paragraphs 49(2), (3)(a), (3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011 (c.20), as well as by section 58(5) of the Marine and Coastal Access Act 2009 (c.23) Section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 115 was amended by paragraph 1 of Schedule 25(2) to the Localism Act 2011 (c.20); Section 117 was amended by paragraph 58(3)(a), (3)(b), (4) and (5) of Schedule 13(1) to the Localism Act 2011 (c.20) and by paragraph 58(3)(a) of Schedule 13(1) to the same Act; Section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 122 was amended by section 140 and paragraph 62 of Schedule 13(1) to the Localism Act 2011 (c.20); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, c.27 and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 134 was amended by 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 (c.20); Section 138 was amended by section 23(4)(a), (b) and (c) of the Growth and Infrastructure Act 2013 (c.27); Section 152 was amended by paragraph 293 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.



“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) to this Order;

“book of reference” means the document identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” unless otherwise provided for means, save for the permitted preliminary works, beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“design and access statement” means the document identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the design and access statement by the Secretary of State for the purposes of this Order;

“design objectives statement” means the design objectives contained within the summary of design objectives at chapter 2 of the design and access statement and certified by the Secretary of State as the design objectives statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the documents identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“exhaust gas emission flue stack” means the exhaust gas emission flue stack excluding any ancillary support structures, sound proof cladding and emissions monitoring platforms;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“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 2016(a);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“illustrative foul and surface water drainage strategy” means the document identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the drainage strategy by the Secretary of State for the purposes of this Order;

“illustrative landscape and ecological mitigation master plan” means the document identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the illustrative landscape and ecological mitigation master plan by the Secretary of State for the purposes of this Order;

“the land plans” means the plans identified Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the land plans by the Secretary of State for the purposes of this Order;

“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;

---

(a) S.I. 2016/1154.

“maintain” includes to the extent assessed in the environmental statement inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development, and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Gas plc (Company No. 02006000) whose registered office is at 1-3 Strand, London WC2N 5EH;

“NRW” means the Natural Resources Body for Wales and any statutory successors from time to time performing the same functions;

“this Order” means the Wrexham Gas Fired Generating Station Order 201[\*];

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(a);

“permitted preliminary works” means any investigation works that may be required pursuant to requirement 5 (ground investigation), requirement 6 (piling) or requirement 8 (archaeology);

“relevant planning authority” means the planning authority for the area in which the authorised development is situated;

“requirements” means those matters set out in Schedule 3 (requirements) to this Order;

“start-up and shut-down” means the periods of 30 minutes before the opening up of construction sites (start-up) and 30 minutes following the end of the working day (shut-down), during which the arrival of workers, changing into and out of work wear, pre-job briefing and leaving the site prior to closing and securing the site take place;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider as defined by section 151(1) of the Communications Act 2003(b);

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Wrexham Power Limited or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

- 
- (a) 1981 c.67. Section 4 was amended by paragraph 150 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 7 was amended by section 70 and paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34), paragraph 52 of Schedule 13 to the Local Government Finance Act 1992 (c.14), paragraph 53 of Schedule 1 to the Fire and Rescue Services Act 2004 (c.21), paragraph 9 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34), paragraph 54(2) of Schedule 1(1) to the Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149, paragraph 110(a) and (b) of Schedule 12(3) to the Postal Services Act 2011 (c.5), section 100(3) of the Planning and Compulsory Purchase Act 2004 (c.5) and paragraph 23 of Schedule 3 to SI 1990/776. Part 2 of Schedule 2 was amended by section 67(1)(3), and paragraphs 2(1)(xiii) and 2(10)(d) of Schedule 7 and paragraph 33 of Schedule 8 to the Gas Act 1986 (c.44), section 190 and paragraph 1(2) and (10) of Schedule 25 to the Water Act 1989 (c.15), sections 112(1)(3), paragraph 2(2)(9)(g) of Schedule 16 and paragraphs 33 and 35(1) of Schedule 17 to the Electricity Act 1989 (c.29). Part 3 of Schedule 2 was amended by paragraph 151 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.
- (b) 2003 c.21.

“the works plan” means the plan identified in Table 1 in Schedule 2 (documents and plans to be certified) to this Order and certified as the works plan by the Secretary of State for the purposes of this Order; and

“Wrexham Power Limited” means Wrexham Power Limited (Company No. 06762265) whose registered office is at Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ.

(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 imposition of restrictions are references to restrictive covenants 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.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and access rights of way plan are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 (authorised development) and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1G inclusive, and a reference to “Work No.2” or “numbered work 2” means numbered works 2A and 2B inclusive.

(5) The expression “includes” is to be construed without limitation.

(6) All areas described in square metres in the book of reference are approximate.

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

## PART 2 PRINCIPAL POWERS

### **Development consent etc. granted by the Order**

**3.**—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to paragraph (3), each numbered work must be situated within the numbered area shown on the works plan.

(3) In constructing each numbered work, the undertaker may construct each numbered work anywhere within the corresponding numbered area shown on the works plan up to the limits of deviation.

### **Maintenance of authorised development**

**4.**—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

### **Operation of authorised development**

**5.**—(1) The undertaker is authorised to operate and use the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of a generating station.

## **Benefit of this Order**

6. Subject to article 7 (consent to transfer benefit of this Order), the provisions of this Order have effect solely for the benefit of the undertaker.

## **Consent to transfer benefit of this Order**

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) 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.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

## **Defence to proceedings in respect of statutory nuisance**

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under

---

(a) Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a);

- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## PART 3 STREETS

### **Power to alter layout, etc. of streets**

**9.**—(1) The undertaker may for the purposes of the authorised development permanently alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; or
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (4) (or such longer period as may be agreed with the undertaker in writing), that street authority is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land, enter on so much of any of the streets specified in Schedule 5 (streets subject to street works) as is within the Order land and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;

---

(a) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3) of the Electricity Act 1989 (c.29); Sections 61 and 65 were amended by section 133 and Schedule 7 to the Building Act 1984 (c.55), section 120 and Schedule 24 to the Environment Act 1995 (c.25) and section 162 and Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Temporary prohibition or restriction of use of streets**

**11.**—(1) The undertaker, during and for the purposes of carrying out the authorised development or any other development necessary for the authorised development that takes place within the Order land, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order land as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; or
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (5)(b) (or such longer period as may be agreed with the undertaker in writing) that street authority is deemed to have granted consent.

### **Access to works**

**12.** The undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order land as the undertaker reasonably requires for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land.

### Agreements with street authorities

- 13.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of the structure of any bridge or tunnel carrying a street; or
  - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### Traffic Regulation

14.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or 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, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
  - (b) make provision as to the direction or priority of vehicular traffic on any road,
- either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and

---

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

(5) If the traffic authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**15.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development or any other development necessary for the authorised development that takes place within the Order land and for that purpose may lay down, take up and alter pipes and may, on any land within the Order land, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but may not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) 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 2016(b).

(7) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to NRW, 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

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**16.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or on any land which may be affected by the authorised development or any other

---

(a) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c.37).

(b) S.I. 2016/1154.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 c.57 as amended by S.I. 2009/3104.



development necessary for the authorised development that takes place within the Order land and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take on to the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) If either the highway authority or street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent (or such longer period as may be agreed with the undertaker in writing)—

- (a) under paragraph (4)(a) in the case of the highway authority; or
- (b) under paragraph (4)(b) in the case of the street authority,

that authority is deemed to have granted consent.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

17.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 18 (compulsory acquisition of rights etc), article 22 (acquisition of subsoil only) and article 26 (temporary use of land for carrying out the authorised development).

## **Compulsory acquisition of rights etc**

**18.—**(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by article 23 (acquisition of part of certain properties), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

(4) In any case where the creation and acquisition of new rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

## **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**19.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(a)</sup> applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is to be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

---

(a) 1981 c.66.

- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) Section 5A (time limit for general vesting declaration) is omitted.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(9) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

### **Time limit for exercise of authority to acquire land compulsorily**

**20.**—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Statutory authority to override easements and other rights**

**21.**—(1) The carrying out or use of the authorised development or any other development necessary for the authorised development that takes place within the Order land and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(1) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

### **Acquisition of subsoil only**

**22.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to paragraph (1) of article 17 (compulsory acquisition of land) and paragraph (1) of article 18 (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.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 23 (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.

### **Acquisition of part of certain properties**

**23.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is to be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is to be required to sell only the land subject to the notice to treat is to be, unless the undertaker agrees to take the land subject to the counter-notice, referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is to be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is to be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the

additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Private rights**

**24.—**(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights or restrictions.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for so long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

(7) Paragraphs (1), (4) and (5) is to have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's temporary possession of it,that any or all of those paragraphs are not to apply to any right specified in the notice; and
- (b) any agreement made, in so far it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right or restriction is vested, belongs or benefits; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights and restrictions over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

### **Rights under or over streets**

**25.—**(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) The undertaker must repair and make good at its own expense and to the reasonable satisfaction of the street authority any damage caused to a street or to any bridge apparatus, highway structure or street furniture in the street belonging to the street authority by virtue of its occupation and appropriation of the subsoil of, or airspace over, the street under this article.

(5) Subject to paragraph (6), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Compensation is not payable under paragraph (5) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**26.—**(1) The undertaker may in connection with the carrying out of the authorised development or any other development necessary for the authorised development that takes place within the Order land—

- (a) enter on and take possession of—
  - (i) so much of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; or
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 8 (land of which temporary possession may be taken), or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not to be required to replace a building or any debris removed under this article.

(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 of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 18 (compulsory acquisition of rights etc); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 22 (acquisition of subsoil only) or article 25 (rights under or over streets).

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

### **Temporary use of land for maintaining the authorised development**

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) 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 of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory



acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

### **Statutory Undertakers**

**28.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on under over or within the Order land; and
- (c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

### **Apparatus and rights of statutory undertakers in streets**

**29.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (power to alter layout, etc. of streets), article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connection**

**30.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 29 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communication provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

**PART 6**  
**MISCELLANEOUS AND GENERAL**

**Felling or lopping of trees and removal of hedgerows**

**31.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any other development necessary for the authorised development that takes place within the Order land or any apparatus used in connection with the authorised development or any other development necessary for the authorised development that takes place within the Order land; or
- (b) from constituting a danger to persons using the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(2) In carrying out any activity authorised by paragraph (1) and paragraph (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land subject to paragraph (2), remove any hedgerows within the Order land if it reasonably believes it to be necessary to do so for the purposes of carrying out, maintaining or using the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(5) In this article “hedgerow” has the same meaning as in the Environment Act 1995.

**Application of landlord and tenant law**

**32.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

33. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

### **Protective provisions**

34. Schedule 9 (protective provisions) has effect.

### **Certification of plans etc.**

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 1 in Schedule 2 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(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—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

---

(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is to be final and is to take effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

### **Procedure in relation to certain approvals**

**37.**—(1) Where an application is made to or a request is made of the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements but including the protective provisions contained in Schedule 9), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 3 (requirements).

(3) Save for applications made pursuant to Schedule 10 (procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 3(1) of Schedule 10 (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 pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(5) Where any application is made as described in 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 paragraph (3).

### **Arbitration**

**38.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

## Funding

39.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State.

(2) The provisions are—

- (a) article 17 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights etc);
- (c) article 22 (acquisition of subsoil only);
- (d) article 23 (acquisition of part of certain properties);
- (e) article 24 (private rights);
- (f) article 25 (rights under or over streets);
- (g) article 26 (temporary use of land for carrying out the authorised development);
- (h) article 27 (temporary use of land for maintaining the authorised development); and
- (i) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Address  
Date

*Signed*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

Articles 2 and 3

### AUTHORISED DEVELOPMENT

In the County Borough of Wrexham—

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act comprising—

**Work No. 1A** development comprising—

- (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 gross rated electrical output of up to 299 MWe;
- (b) up to two exhaust gas emission flue stacks;
- (c) up to two Heat Recovery Steam Generator buildings with up to two Heat Recovery Steam Generators (HRSG's);
- (d) air cooled condenser; and
- (e) switchgear room.

**Work No. 1B** development comprising—

- (a) a workshop;
- (b) telemetry apparatus;
- (c) auxiliary distilled fuel oil generator; and
- (d) a natural gas pressure regulating installation (PRI) (also known as a gas receiving station and gas treatment compound) within the power station complex containing—
  - (i) full bore 400mm nominal bore manually and remotely actuated isolation valves;
  - (ii) bypass valves, slam-shut valves, creep-relief valves and pressure reduction valves;
  - (iii) gas filters;
  - (iv) liquid separator;
  - (v) up to two 100% gas heaters (bath water type);
  - (vi) gas meter(s);
  - (vii) non-return and relief valves;
  - (viii) control and instrument kiosk;
  - (ix) electricity supply kiosk;
  - (x) a section of isolated pipe suitable for receiving a pressure inspection gauge (PIG) (also known as PIG launching/receiving facility); and
  - (xi) high pressure steel pipeline with a nominal bore of 400mm.

**Work No. 1C** development comprising—

- (a) a water treatment system;
- (b) a raw/fire water storage tank and up to two water storage tanks; and
- (c) an above ground foul water pump station.

**Work No. 1D** development comprising—

- (a) a 132kV switchyard containing plant required to manage the transmission of electricity into the distribution network; and

(b) up to three transformer compounds with up to three transformers.

**Work No. 1E** development comprising an administration/control building.

**Work No. 1F** development comprising a heat network interface building.

**Work No. 1G** development comprising—

- (a) security infrastructure, including cameras, perimeter fencing, fencing, gate and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns and lights;
- (c) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
- (d) foul, surface water and trade effluent drainage (including underground pipework and access chambers);
- (e) waste management infrastructure;
- (f) electricity, water, wastewater and telecommunications and other services;
- (g) site preparation works including earthworks and enabling works and tree removal;
- (h) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (i) part of underground gas pipeline connection;
- (j) other ancillary equipment; and
- (k) construction compound.

**Work No. 2A** development comprising temporary construction laydown and car parking area comprising—

- (a) fencing;
- (b) tree removal;
- (c) lighting infrastructure including lighting columns and lighting;
- (d) concrete batching plant;
- (e) signage;
- (f) security kiosk;
- (g) weighbridge;
- (h) staff welfare cabins; and
- (i) site preparation works including earthworks and enabling works and tree removal.

**Work No. 2B** development comprising—

- (a) creation of a construction laydown and car parking area comprising—
  - (i) fencing;
  - (ii) tree removal;
  - (iii) lighting infrastructure including lighting columns and lighting;
  - (iv) concrete batching plant;
  - (v) signage;
  - (vi) security kiosk;
  - (vii) weighbridge;
  - (viii) staff welfare cabins; and
  - (ix) site preparation works including earthworks and enabling works and tree removal; and
- (b) an operational and maintenance laydown area comprising—
  - (i) hardstanding;

- (ii) lighting columns and lights; and
- (iii) fencing.

**Work No. 3** development comprising—

- (a) surface water drainage comprising—
  - (i) underground pipework;
  - (ii) access chambers; and
  - (iii) outfall to Redwither Brook;
- (b) tree removal;
- (c) landscaping and ecological mitigation; and
- (d) construction and maintenance of up to three surface water retention pond(s) providing a total minimum capacity of 2,085m<sup>3</sup> and vortex flow control to limit the discharge rate to a maximum of 12.2 litres per second.

**Work No. 4** development comprising landscaping, bunding, fencing, boundary treatments, tree planting, habitat creation and ecological mitigation.

**Work No. 5** development comprising the alteration of the existing access road to Kingmoor Park, off the east side of Bryn Lane including levelling, regrading and resurfacing,

and such other ancillary buildings, structures, works or operations as are integral to and part of the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.



SCHEDULE 2

Articles 2 and 35

DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 1**

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access rights of way plan	2.4	2	September 2016
book of reference	4.3	3	January 2017
design objectives statement, contained within—			
design and access statement	5.3	0	March 2016
environmental statement, comprising—			
Volume 1: Non-Technical Summary to Environmental Statement (English)	6.1	0	March 2016
Volume 1: Non-Technical Summary to Environmental Statement (Welsh)	6.1	0	March 2016
Volume 2: Environmental Statement, Main Statement	6.2	0	March 2016
Volume 3: Environmental Statement Figures	6.3	0	March 2016
Volume 4: Environmental Statement Appendices, amended by:	6.4	0	March 2016
Appendix 14.3: Drainage Strategy	6.4.9	1	November 2016
Appendix 19.1: Draft Construction Environmental Management Plan	6.4.11	2	November 2016
Addendum to Environmental Statement Cumulative Effects	11.8	0	September 2016

Assessment - Electrical Connection			
illustrative landscape and ecological mitigation master plan	2.9.7 (sheet 1 of 7)	0	March 2016
land plans	2.2	5	January 2017
works plan	2.3	0	March 2016

## SCHEDULE 3 REQUIREMENTS

Article 3

### Time limits

1. The authorised development must be commenced within five years of the date that this Order is made.

### Detailed design approval

2.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 15(1))—

**Table 2**

works plan	Submission document reference number 2.3
access rights of way plan	Submission document reference number 2.4

(2) The authorised development must not exceed the maximum parameters specified in Table 3 below (as the same may be amended by approval of the relevant planning authority under requirement 15(1))—

**Table 3**

<i>(1)</i> Element of authorised development	<i>(2)</i> Maximum height (metres) above a site level of 30 metres AOD	<i>(3)</i> Maximum width (metres)	<i>(4)</i> Maximum length (metres)	<i>(5)</i> Other parameters
Gas turbine building (part of numbered work 1A)	25 metres	45 metres	60 metres	-
Each Heat Recovery Steam Generator Building (part of numbered work 1A)	35 metres	13 metres	25 metres	-
Each exhaust gas emission flue stack (part of numbered work 1A)	50 metres	-	-	Maximum diameter 6.5 metres

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of 30 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Steam turbine building (part of numbered work 1A)	21 metres	26 metres	45 metres	-
Air cooled condenser (part of numbered work 1A)	26 metres	48 metres	48 metres	-
Switchgear room (part of numbered work 1D)	5 metres	10 metres	15 metres	-
Raw/fire water storage tank (part of numbered work 1C)	20 metres	-	-	Maximum diameter 15 metres
Each water storage tank (part of numbered work 1C)	20 metres	-	-	Maximum diameter 5 metres
Water treatment system (part of numbered work 1C)	10 metres	25 metres	20 metres	-
Workshop (part of numbered work 1B)	10 metres	20 metres	30 metres	-
Natural gas pressure regulating installation (PRI) (part of numbered work 1B)	5 metres	25 metres	35 metres	-
Administration/control building (numbered work 1E)	10 metres	10 metres	20 metres	-

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of 30 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Heat network interface building (numbered work 1F)	15 metres	25 metres	45 metres	-
The first transformer compound (part of numbered work 1D)	6 metres	15 metres	15 metres	-
The second and third transformer compounds (part of numbered work 1D)	6 metres	10 metres	15 metres	-
132kV switchyard (part of work numbered 1D)	10 metres	42 metres	73 metres	-
Perimeter fencing (part of numbered work 1G)	2.5 metres	-	-	-

(3) To the extent that design objectives relating to any numbered work are set out in the design objectives statement, that numbered work must be designed substantially in accordance with the relevant design objective set out therein.

(4) Numbered work 1 and, in respect of the security kiosk and weighbridge only, numbered work 2B may not commence until written details of the following have been submitted to and approved by the relevant planning authority—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures; and
- (b) the colour, materials and surface finishes of all permanent buildings and structures.

(5) The details to be submitted for approval under sub-paragraph (4) must include appropriately scaled plans and sectional drawings.

### **Provision of and implementation and maintenance of landscaping and ecological mitigation**

3.—(1) No authorised development may commence until a written landscaping and ecological mitigation scheme has been submitted to and approved by the relevant planning authority. The landscaping and ecological mitigation scheme must be substantially in accordance with the illustrative landscape and ecological mitigation master plan and must include details of all proposed hard and soft landscaping and ecological mitigation works, including—

- (a) location, number, species, size and planting density of any proposed planting;

- (b) site restoration cultivation, importing of materials including topsoil and subsoil handling and storage in accordance with BS 3882:2007 and other landscape reinstatement operations in accordance with BS 4428 Code of Practice for general Landscape Operations, and the earthworks specification to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) an arboricultural method statement including details of existing trees and tree groups identified for retention, management and reinforcement with the type and extent of protection to be in accordance with BS 5837: 2012;
- (e) implementation timetables for all landscaping works;
- (f) surface water attenuation ponds;
- (g) the locations of low fertility (where applicable) for invertebrates;
- (h) butterfly habitat planting; and
- (i) the ecological monitoring and management included in the environmental statement.

(2) The relevant planning authority must consult NRW before determining the landscaping and ecological mitigation scheme under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The landscaping and ecological mitigation works must be carried out in accordance with the approved landscaping and ecological mitigation scheme.

(4) The landscaping and ecological mitigation works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).

(5) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(6) The landscaping and ecological mitigation works must be managed and maintained throughout the life of the authorised development to ensure the long term adequacy of the approved landscaping and ecological mitigation scheme.

### **Construction and Environment Management Plan**

4.—(1) No authorised development may commence until a construction and environment management plan has been submitted to and approved by the relevant planning authority. The construction and environment management plan must be substantially in accordance with the draft construction and environment management plan forming part of the environmental statement insofar as it relates to the relevant numbered work and must include the following—

- (a) the mechanism for ensuring that all relevant environmental controls and mitigation are incorporated into a construction method statement;
- (b) confirmation that no explosive blasting will be carried out during any demolition;
- (c) environmental objectives and targets;
- (d) environmental monitoring;
- (e) roles and responsibilities;
- (f) means of communication, record keeping, reporting, auditing and review;
- (g) complaints procedures;
- (h) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (i) details of construction lighting to protect potential foraging/commuting features;
- (j) habitats protection measures, including fencing, protection zones for retained trees and bat roosts and means of escape for badgers and other small mammals;
- (k) measures to minimise the spread of invasive species;

- (l) a site waste management plan;
- (m) surface and ground water protection measures (including bunding potential contaminate sources);
- (n) a construction drainage strategy;
- (o) a methodology for using harvested water where possible;
- (p) ecology, landscape and visual impact mitigation; and
- (q) a protocol in the event that unexpected contaminated land is identified during ground investigation or construction.

(2) The relevant planning authority must consult NRW before determining the construction environment management plan under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The construction works must be undertaken in accordance with the approved construction environment management plan.

(4) The undertaker may submit for approval by the relevant planning authority a construction and environment management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction and environment management plan may be commenced following the approval of such a construction and environment management plan.

### **Ground investigation**

5.—(1) Each of numbered works 1 to 5 must not be commenced until, for that numbered work, a scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority.

(2) The relevant planning authority must consult NRW before determining the scheme under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The scheme must include an assessment report, prepared by a specialist consultant, to identify the likely extent of any contamination and any remedial measures that may be required to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) Any required remediation must be carried out in accordance with the approved scheme.

### **Piling**

6.—(1) No piling may commence until a piling strategy has been submitted to and approved by the relevant planning authority, such strategy to include a piling risk assessment, the results of such assessment and the piling techniques to be used in carrying out the authorised development.

(2) Piling must be carried out in accordance with the approved strategy.

### **Fencing and other means of enclosure**

7.—(1) No authorised development may commence until details of the proposed fencing and other means of enclosure for the authorised development have been submitted to and approved by the relevant planning authority.

(2) Fencing and other means of enclosure must be carried out in accordance with the approved details.

(3) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(4) The undertaker may submit for approval by the relevant planning authority details of the proposed means of enclosure for each of numbered work 1G, numbered work 2A and numbered work 2B individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the details of the proposed means of enclosure may be commenced following the approval of such details.

### **Archaeology**

**8.**—(1) No authorised development may commence until a written scheme setting out the methodology for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority.

(2) The scheme must provide for—

- (a) the carrying out of a geophysical survey of greenfield areas within the Order land;
- (b) a targeted archaeological investigation of any anomalies that may be identified by the geophysical surveys;
- (c) the identification of areas where a watching brief is required; and
- (d) the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) The scheme approved under sub-paragraph (1) must be carried out by a suitably qualified person or body.

(4) Any watching brief must be carried out in accordance with the approved scheme.

(5) The undertaker may submit for approval by the relevant planning authority a scheme for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the scheme may be commenced following the approval of such a scheme.

### **Construction traffic management plan**

**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 forming part of the environmental statement insofar as it relates to the relevant numbered work and must include the following—

- (a) details of a plan to encourage car sharing between construction workers travelling to the site, including details encouraging the use of the routes as set out in the construction vehicle routing plans referred to in sub-paragraph (b);
- (b) construction vehicle routing plans;
- (c) details of a HGV vehicle booking management system;
- (d) site access plans and 24 hour access arrangements;
- (e) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (f) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads together with the staggering of construction workers start and finish times;
- (g) pre-notification of deliveries involving abnormal indivisible loads and details of where an appropriately authorised vehicle escort would be required;
- (h) proposals for temporary warning signs and banksman and appropriate escort details (including for horse riders, cyclists and users of the road network and public rights of way);
- (i) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development (including details of



any proposed temporary closures and diversions and notification thereof where necessary);

- (j) details of the on-site parking arrangements for construction plant and vehicles; and
- (k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during construction of the authorised development.

(2) The construction traffic management plan must be implemented as approved.

(3) The undertaker may submit for approval by the relevant planning authority a construction traffic management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction traffic management plan may be commenced following the approval of such a construction traffic management plan.

(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.

(5) In this requirement “abnormal indivisible load” has the same meaning as in the Road Vehicles (Authorisation of Special Types) (General) Order 2003(a).

### **Travel plan during operational phase**

**10.**—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. Such operational travel plan to include—

- (a) objectives and targets; and
- (b) measures and initiatives to promote sustainable travel.

(2) The operational travel plan must be carried out as approved.

### **Construction hours**

**11.**—(1) Construction work for the authorised development must not take place outside the hours of—

- (a) 07:00 to 19:00 on Monday to Friday; and
- (b) 07:00 to 13:00 on Saturdays and public holidays.

(2) Sub-paragraph (1) does not prevent construction works being carried out on any Sunday or outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 06:30 to 07:00 and a shut-down period from 19:00 to 19:30 on weekdays (excluding public holidays) and a 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.

### **Foul and surface water drainage**

**12.**—(1) Numbered works 1, 2 and 3 must not commence until written details of the surface water drainage system and the foul water drainage system for the operation of the authorised development have been submitted to and approved by the relevant planning authority. The submitted details of the surface water drainage system and the foul water drainage system must be substantially in accordance with the illustrative foul and surface water drainage strategy.

(2) The relevant planning authority must consult NRW and Dŵr Cymru Welsh Water before determining the details of the surface water drainage system and the foul water drainage system

---

(a) S.I. 2003/1998.

under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) applies.

(3) The surface water drainage system and the foul water drainage system for the authorised development must be constructed and maintained in accordance with the approved details.

### **Artificial lighting**

**13.—**(1) No generation of electricity on a commercial basis is to take place until written details of the control of artificial lighting during maintenance and operation of the authorised development have been submitted to and approved by the relevant planning authority, such details to include the timetable for implementation of the artificial lighting and measures to keep external lighting to the minimum necessary for operational safety and security reasons, incorporating cut-offs to reduce light pollution.

(2) The relevant planning authority must consult NRW before determining the details of artificial lighting under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The artificial lighting for the authorised development must be implemented in accordance with the approved details.

(4) The undertaker may submit for approval by the relevant planning authority written details of the artificial lighting during maintenance and operation of the authorised development for each of numbered work 1G and numbered work 2B individually forming the numbered work the subject of the written details of the control of artificial lighting and, in such a case, only those parts of the authorised development may be commenced following the approval of such details.

### **Local economic benefit**

**14.—**(1) No part of the authorised development must commence until a scheme for the promotion of local economic benefit from the authorised development in the County Borough of Wrexham has been submitted to and approved by the relevant planning authority. Such scheme must include—

- (a) a commitment on the undertaker to invite to tender companies with addresses in the County Borough of Wrexham as the relevant planning authority may notify to the undertaker in writing;
- (b) a methodology for the use of local people and local businesses, where appropriate, in relation to the construction of the authorised development; and
- (c) a strategy for the provision of training opportunities for local companies (who are successful under sub-paragraph (a)) or local people who are employed to work on the authorised development under sub-paragraph (b).

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

### **Amendments to approved details**

**15.—**(1) Subject to sub-paragraph (2), any 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).

(2) Sub-paragraph (1) does not apply to the works plan or the access rights of way plan.

(3) Approval under sub-paragraph (1) and requirement 2(2) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different

environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Combined heat and power**

16.—(1) Prior to the date of final commissioning, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.

(2) The review must provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary plant and pipework to the boundary of Work No. 1 must be submitted to and approved by the relevant planning authority; any plant and pipework installed up to the boundary of Work No.1 to enable the use of heat must be installed in accordance with the agreed details.

(4) The undertaker must carry out the on-going monitoring, exploration of potential opportunities to use heat from the authorised development and any subsequent reviews in accordance with the review of potential opportunities approved under sub-paragraph (1).

### **Decommissioning strategy**

17.—(1) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, within twenty four months of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of Work No. 1 must be submitted to the relevant planning authority.

(2) The scheme submitted to the relevant planning authority for approval under sub-paragraph (1) must be substantially in accordance with the construction and environment management plan approved under paragraph 4(1) of this Schedule 3.

(3) The demolition and removal of Work No. 1 must be implemented in accordance with the approved scheme.

(4) On the one year anniversary of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis) the undertaker must notify the relevant planning authority of the same.

### **Requirements for written approval, etc.**

18.—(1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing and must not be unreasonably withheld or delayed.

(2) Where under any of the above requirements a written scheme is required it must be accompanied by such illustrations as are necessary and appropriate in the circumstances.

### **Date of final commissioning and cessation**

19.—(1) The undertaker must 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.

(2) The undertaker must notify the relevant planning authority of the date the authorised development permanently ceases to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

SCHEDULE 4

Article 9

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	From line A-B to points C and D shown on the access and rights of way plan improvements to the existing access (the bellmouth of the Kingmoor Park Access Road as shown at line A-B on the access rights of way plan), resurfacing and regrading of the Kingmoor Park Access Road

SCHEDULE 5

Article 10

STREETS SUBJECT TO STREET WORKS

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	Street works to upgrade the existing access (the bellmouth of the Kingmoor Park Access Road as shown between line A-B on the access rights of way plan) and to upgrade and widen the Kingmoor Park Access Road between line A-B and points C and D on the access rights of way plan
In the County Borough of Wrexham	Oak Road	Street works to horizontally directionally drill a gas pipeline with a nominal bore of 400mm underneath Oak Road
In the County Borough of Wrexham	Maelor Gas Works Access Road and Southern Access Track	Street works to emplace a gas pipeline with a nominal bore of 400mm underneath the Maelor Gas Works Access Road and Southern Access Track

SCHEDULE 6

Article 11

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF  
STREETS

**Table 6**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	<p><b>Prohibition/Restriction:</b> Between lines A-B and point D on the access rights of way plan being approximately 111 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of the Kingmoor Park Access Road at any time in order to carry out numbered works 1-5</p>
In the County Borough of Wrexham	Oak Road	<p><b>Prohibition/Restriction:</b> Between lines E-F and G-H on the access rights of way plan being approximately 111 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of Oak Road at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the County Borough of Wrexham	Maelor Gas Works Access Road and Southern Access Track	<p><b>Prohibition/Restriction:</b> Between points K and J and lines L-M on the access rights of way plan being approximately 365 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of the Maelor Gas Works Access Road and Southern Access Track at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
In the County Borough of Wrexham	Public Right of Way known as ISY/18	<p><b>Prohibition/Restriction:</b> Between lines P-Q on the access rights of way plan being approximately 64m</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of the Public Right of Way at any time during the construction of numbered works 1-5 as is required to facilitate or is incidental to the carrying out of the authorised development</p>
In the County Borough of Wrexham	Public Right of Way known as SES/25	<p><b>Prohibition/Restriction:</b> Between lines R-S on the access rights of way plan being approximately 103m</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of the Public Right of Way at any time during the construction of numbered works 1-5 as is required to facilitate or is incidental to the carrying out of the authorised development</p>

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS  
AND IMPOSITION OF NEW RESTRICTIONS**

*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(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 “land is acquired or taken from” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

*Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right, by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired;
- (b) the restrictive covenant imposed or to be imposed;
- (c) the land over which the right is or is to be exercisable; or
- (d) the land over which the restrictive covenant is or is to be applied.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction with the modifications specified in the following provisions of this Schedule.

---

(a) 1973 c.26.



4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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 of a notice to treat in respect of a right or restrictive covenant over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Wrexham Gas Fired Generating Station Order 201[\*] (the Order) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily created and acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right created and acquired and to continue to be entitled to the benefit of the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 7**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Kingmoor Park, Wrexham located off the east side of Bryn Lane	PS1A	Temporary use to facilitate construction for numbered works 1-5
Land at Kingmoor Park, Wrexham located off the east side of Bryn Lane	PS1B	Temporary use to facilitate construction for numbered works 1-5
Land at Plum Tree Farm, Isycoed, Wrexham	GC3A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4D	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5D	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5E	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land located to the west side of the B5130	GC8A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Higher Oak, Oak Road, Wrexham	GC9B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Higher Oak, Oak Road, Wrexham	GC9C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12D - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12E - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	SAT1A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC14A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC14B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC15A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16C - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC17A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF NATIONAL GRID

**Application**

1. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

**Interpretation**

2.—(1) In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Gas plc (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 5(3) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of TP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

(2) Except for paragraphs 3 (apparatus of National Grid in streets subject to temporary prohibition or restriction), 7 (retained apparatus: protection of National Grid as gas undertaker), 8 (expenses) and 9 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

---

(a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertakers.



### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

3. Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Acquisition of land**

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

### **Removal of apparatus**

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (3) to (6) inclusive.

(2) As a condition of agreement between the parties in paragraph 4, prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (4) afford to National Grid to their satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3), in the land in which the alternative apparatus or part of such

apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(5) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(6) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 38 (arbitration) of the Order shall apply.

### **Retained apparatus: protection of National Grid as Gas Undertaker**

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(3) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 2 and 4 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services" as the same may be replaced from time to time.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 8.

## **Expenses**

**8.—**(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use

compulsory purchase powers to acquire any necessary rights under paragraph 5(4) all costs incurred as a result of such action;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the

repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 9 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

10. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

11.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 5(3) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

## Access

12. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

13. Save for differences or disputes arising under paragraphs 5(3), 5(5), 6(1) and 7 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

## PART 2(a)

### FOR THE PROTECTION OF BT GROUP PLC

14.—(1) For the protection of BT Group Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and BT Group Plc.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(b);

“BT apparatus” means all boxes, cables, poles and plant, associated cabling or ducting or such other electronic communications apparatus as is owned by BT Group Plc;

“BT apparatus map” means a map prepared by BT Group Plc showing the location of BT apparatus in or on the Order land;

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ which is an electronic communications code operator;

“Click Before You Dig” means the team within BT Group Plc charged with providing assistance to members of the general public in order to locate BT apparatus on land and includes any successor team within BT Group Plc with the same remit;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“the highway” includes carriageways, verges, footpaths etc; and

“Network Alterations team” means the team within BT Group Plc charged with carrying out planned diversion and protection works to BT apparatus and includes any successor team within BT Group Plc with the same remit.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any BT apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of BT Group Plc; or

---

(a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertakers.

(b) 2003 c.21.

(c) See section 106.

(b) there is any interruption in the supply of the service provided by BT Group Plc,

the undertaker must bear and pay the cost reasonably incurred by BT Group Plc in making good such damage or restoring the supply and make reasonable compensation to BT Group Plc for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of BT Group Plc, its officers, servants, contractors or agents.

(3) BT Group Plc must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and BT Group Plc under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

**16.** This part of this Schedule does not apply to—

(a) any BT apparatus in respect of which the relations between the undertaker and BT Group Plc are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**17.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and BT Group Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**18.** The undertaker must not enter into any underground structures owned by BT Group Plc without authorised BT Group Plc personnel.

**19.** The undertaker must confirm the location and nature of works arising from the construction of the authorised development which, in the undertaker's reasonable opinion, are likely to affect BT apparatus within or immediately adjacent to the Order land by contacting the Network Alterations team with detailed plans of the works and to check what alterations to BT apparatus (if any) may be required.

**20.** Prior to any works commencing or the moving of heavy plant or equipment over BT apparatus within or immediately adjacent to the Order land, the undertaker must confirm details of such BT apparatus with a representative from Click Before You Dig who will provide a map(s) showing the location of BT apparatus within or immediately adjacent to the Order land.

**21.** In the event that any BT apparatus within or immediately adjacent to the Order land is likely to be placed at risk, either temporarily or permanently because of the movement of plant or equipment or both pursuant to the authorised development, the undertaker must contact a Network Alterations team representative.

**22.** In the event that works undertaken by the undertaker pursuant to the authorised development necessitate a change in level of the frames and covers comprised within BT apparatus, the undertaker must seek consent from a Network Alterations team representative to carry out such works.

**23.** Where the BT apparatus map(s) show(s) BT apparatus within or immediately adjacent to the Order land, the undertaker must contact Click Before You Dig before commencing works on or moving plant or equipment onto the Order land, to ensure that any sub-surface BT apparatus can be located and marked up by BT Group Plc.

**24.** Protection measures for BT apparatus within or immediately adjacent to the Order land and which may be affected by the authorised development must be approved in advance by Click Before You Dig. In carrying out the authorised development, the undertaker must take reasonable

care in the protection of BT apparatus comprising optical fibre or co-axial cabling or both and use reasonable endeavours to avoid disturbing BT apparatus.

**25.** Prior written notice must be provided to Click Before You Dig of any excavating or backfilling proposed by the undertaker around BT apparatus, so that BT Group Plc representatives can attend the Order land if necessary. Unless alternative protection is agreed with Click Before You Dig or a Network Alterations team representative in advance, the normal depth of cover for BT apparatus underground of 350mm in footways and 600mm in carriageways must be maintained by the undertaker. Where the undertaker considers that it can not maintain the relevant depth of BT apparatus, the undertaker must provide written notice to Click Before You Dig, and BT Group Plc may, if reasonable in all the circumstances, within 14 days notify the undertaker in writing that it requires the undertaker to divert the BT apparatus at the undertaker's expense.

**26.** All excavation works undertaken by the undertaker immediately adjacent to BT apparatus within or immediately adjacent to the Order land is to be carried out by hand until the extent and location of the BT apparatus is known. Mechanical borers or excavators or both must not be used within 1 metre of BT Apparatus (2 metres if it is a pole) without the prior approval of a BT Group Plc representative.

**27.** To prevent any movement of BT apparatus within or immediately adjacent to the Order land during any excavation as part of the construction of the authorised development, structural support is to be used as directed by Click Before You Dig or the Network Alteration team if the excavation is—

- (a) deeper than the immediately adjacent BT apparatus;
- (b) within 1 metre of BT apparatus in stable soil; or
- (c) within 5 metres of BT apparatus in unstable soil.

**28.** The undertaker must notify Click Before You Dig in advance of carrying out any of the following methods of construction or site preparation as part of the authorised development on or in Order land that is immediately adjacent to BT apparatus or on or in Order land within which there is BT apparatus—

- (a) pile driving within 10 metres of BT apparatus;
- (b) using explosives within 20 metres of BT apparatus; or
- (c) using laser equipment within 10 metres of BT apparatus.

**29.** The undertaker will keep clear and unobstructed access to BT Group Plc manhole and joint box chambers within the Order land.

**30.** In the event of any damage to BT apparatus, the undertaker must immediately inform a BT Group Plc representative.

## **PART 3(a)**

### **FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG**

**31.** For the protection of DCC referred to in this Part 3 of Schedule 9, the following provisions will, unless otherwise agreed in writing between the undertaker and DCC, have effect.

**32.** In this Part of this Schedule—

“acceptable insurance” means a policy of public liability/third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC,

---

(a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertakers.



during the construction of the works pursuant to this Order with a reputable insurer and with DCC named as an insured party under the policy;

“accessories” has the same meaning as that set out in section 219 WIA 1991 but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter; or
- (c) within 9 metres either side of the centre line of a rising main;

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works will not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

“in” in a context referring to DCC apparatus in land includes a reference to DCC apparatus under, over or upon land;

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure is to include any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991 c.56 as amended; and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto.

**33.—**(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC’s rights to access DCC apparatus or accessories but subject always to each sub-paragraph of paragraphs 37 and 38 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

### **Precedence of the WIA 1991**

**34.—**(1) Regardless of any provision of this Order and this Schedule the undertaker must comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc; and
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 38 or specified in this Schedule do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DCC apparatus**

**35.**—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 34(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (2) must be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph (2), the draft specification is to be the specification and the works must be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph (2) and DCC is entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 35 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 35 apply to and in respect of the new draft specification.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 36 below save that the undertaker must comply with sub-paragraphs (1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph (2) to DCC apparatus, and if DCC opts to do so it must—

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it must agree with the undertaker the reasonable costs of the works to be met by the undertaker;

- (c) following agreement and payment of the costs, DCC must as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.

(7) Only those contractors that satisfy DCC's reasonable health & safety requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required and such trial holes must be constructed at the undertaker's expense.

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed must be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

### **Suspension of works**

**36.** DCC is entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC—

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) are to forthwith suspend or cease the works having due regard to health and safety factors and discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
- (d) in the event that DCC fails to supply the written notice within 5 days of suspension DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works;
- (e) DCC must commence, carry out and complete any remedial works pursuant to sub-paragraph (a) as soon as reasonably practicable and DCC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker will be entitled to resume the works; and
- (f) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 36.

**37.—(1)** In the event that either the undertaker or DCC (for the purpose of this paragraph 37 "the party" or together "the parties") wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to 'work' and 'works' in this sub-paragraph (1), to the extent that this refers to 'work' or 'works' to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

(2) Subject to paragraph 38, differences or disputes arising between the undertaker and DCC under this Schedule must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

## **Emergency Works**

**38.**—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 40 shall apply.

(2) DCC must at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (2) are to take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 38, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

## **Insurance**

**39.** The undertaker shall not commence any works under paragraph 35(1) to this Part unless and until the undertaker has procured acceptable insurance.

## **Damage to DCC apparatus**

**40.**—(1) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 35(1) to this Part in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and shall pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licensees, agents and invitees relating to the performance of the works;
- (b) Damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and
- (c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.

(2) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker and DCC shall use all reasonable endeavours to mitigate any claims, demand, costs, damages, expenses and losses for which the undertaker may be liable under this paragraph 40.

(5) Neither the undertaker, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to DCC for any indirect or consequential loss.

(6) Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

## PART 4(a)

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

41.—(1) For the protection of any operator referred to in this part of this Schedule (save for BT Group Plc which is protected by Part 2 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003**(b)**;

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)**(c)** of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act**(d)**;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

42.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

---

(a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertakers.

(b) 2003 c.21.

(c) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(d) See section 106.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

43. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

44. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 5

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

#### Application

45. For the protection of the utility undertakers referred to in this Part of this Schedule 9 (save for National Grid which is protected by Part 1 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker(s) concerned.

#### Interpretation

46. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **Precedence of 1991 Act in respect of apparatus in streets**

47. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in streets subject to temporary prohibition or restriction**

48. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **No acquisition etc. except by agreement**

49. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

50.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours

to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

#### **Facilities and rights for alternative apparatus**

**51.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**52.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 47, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written



notice to the undertaker of that requirement, paragraphs 45 to 51 apply as if the removal of the apparatus had been required by the undertaker under paragraph 50(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**53.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 50(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 50(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

### **Expenses and costs**

**54.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 50(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its

intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**55.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 6

### FOR THE PROTECTION OF WALES AND WEST UTILITIES

#### Application

**56.** For the protection of Wales and West Utilities as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Wales and West Utilities, have effect.

#### Interpretation

**57.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of gas supply;

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates;

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or are incidental to the authorised development—

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which is not required under paragraph 61 of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or

(c) comprise security infrastructure to be located on plot AG11 shown on the land plans and described in the book of reference; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ.

### **Precedence of 1991 Act in respect of apparatus in streets**

**58.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in streets subject to temporary prohibition or restriction**

**59.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Wales and West Utilities is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **No acquisition etc. except by agreement**

**60.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

**61.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Wales and West Utilities’ apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Wales and West Utilities in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Wales and West Utilities written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) Wales and West Utilities, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Wales and West Utilities that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Wales and West Utilities, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Wales and West Utilities.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

### **Facilities and rights for alternative apparatus**

**62.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Wales and West Utilities than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**63.**—(1) Not less than 28 days before the commencement of any specified work the undertaker must submit to Wales and West Utilities a plan, section and description of the specified work to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Wales and West Utilities for—

- (a) the alteration or otherwise for the protection of the apparatus, or for securing access to it; and/or
- (b) the alteration or otherwise for the protection of any security infrastructure belonging to or maintained by Wales and West Utilities.

(3) Wales and West Utilities is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If Wales and West Utilities in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that requirement, paragraphs 61 and 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(2).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified work, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**64.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities the reasonable expenses incurred by Wales and West Utilities in, or in connection with, the inspection, removal, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any of the works referred to in paragraph 61(2) or any specified work.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Wales and West Utilities by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 61(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Wales and West Utilities in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer Wales and West Utilities any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**65.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 61(2) or any specified work, any damage

is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by the Wales and West Utilities,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Wales and West Utilities, its officers, servants, contractors or agents.

(3) Wales and West Utilities must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **PART 7**

### **FOR THE PROTECTION OF THE SOLAR OPERATOR**

#### **Application**

67. For the protection of the solar operator as referred to in this Part 7 of Schedule 9, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

#### **Interpretation**

68. In this Part of this Schedule—

“apparatus” means any solar photovoltaic panels, cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule is to include the use and maintenance of the authorised development;

“diversionary agreement” means a contractually binding agreement providing for the passage of a gas pipeline around the solar farm site;

“diversionary planning permission” means any planning permission that may be granted pursuant to the 1990 Act providing for the routing of a gas pipeline to avoid the solar farm site;

“gas pipeline” means a pipeline to carry gas between Maelor Gasworks and Work No. 1;

“in” in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

“solar farm permission” means full planning permission granted on 31 July 2015 by Wrexham Country Borough Council for the apparatus (Ref P/2015/0287) including any planning permission granted pursuant to an application to vary any condition of planning permission (Ref P/2015/0287) under section 73 of the 1990 Act;

“solar farm site” means the site on which planning permission was granted by the solar farm permission;

“solar operator” means the operator from time to time of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development (including, but without limitation, the gas pipeline) which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

### **Removal of apparatus**

**69.—**(1) If, for the purpose of executing any specified work, the undertaker requires the removal of any apparatus in the solar farm site, the undertaker must give the solar operator written notice of that requirement, together with a plan and section of the work proposed and a plan, section and description of the specified work to be executed with written confirmation of the extent to which the removed apparatus can be reinstated as soon as reasonably practicable following completion of the execution of the specified work.

(2) Within 56 days of receipt of the written notice referred to in sub-paragraph (1) the solar operator must proceed without unnecessary delay to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(3) Regardless of anything in sub-paragraph (2), the undertaker may, in the notice issued under sub-paragraph (1), give notice to the solar operator that it desires itself to execute any work, or part of any work, in connection with the removal of apparatus in any of plots GC12, GC12A and GC12B as identified on the land plans, and where such notice is given that work, instead of being executed by the solar operator, must be executed by the undertaker within 56 days of the solar operator receiving such notice.

(4) Where notice is given in the circumstances described in sub-paragraph (3), the undertaker must provide the solar operator with the opportunity to supervise any work, or part of any work, in connection with the removal of apparatus but if the solar operator does not provide any superintendence within the required 56 days, then the undertaker may proceed to execute the works.

(5) Nothing in sub-paragraphs (3) or (4) authorises the undertaker to execute the connection or disconnection of any apparatus. In carrying out any works under sub-paragraph (3) or (4), the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the solar operator and the undertaker must ensure that the works are carried out by persons competent and suitably qualified to carry out such works.

(6) Where the undertaker has served written notice in accordance with sub-paragraph (1) the solar operator must proceed to disconnect any apparatus to be removed without delay upon written request from the undertaker.

(7) Where the undertaker has served written notice in accordance with sub-paragraph (1), the solar operator must, within 56 days of receipt of such notice, give written notice to the undertaker whether it requires the undertaker to reinstate the removed apparatus in accordance with such reasonable requirements as the solar operator may specify and if no notice is received by the undertaker, the undertaker is under no obligation to reinstate the removed apparatus.

## **Retained apparatus**

**70.**—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 69 (removal of apparatus) the undertaker must submit to the solar operator a plan, section and description of the specified work to be executed.

(2) Those specified works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by the solar operator for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(3) The solar operator is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by the solar operator under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If the solar operator in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 69 (removal of apparatus) applies as if the removal of the apparatus had been required by the undertaker under paragraph 69(1).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified work, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the solar operator notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

## **Expenses and costs**

**71.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, removal, reinstatement, alteration or protection of any apparatus which may be required in consequence of the execution of any of any of the works referred to in paragraph 69 or any specified work.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed and not reinstated under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration as provided for in paragraph 74 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the solar operator by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—



- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraphs 69 or 70; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to the solar operator in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer the solar operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**72.—**(1) Subject to sub-paragraphs (2) and (3), if by reason of or in consequence of the construction of any of the works referred to in paragraphs 69 or 70 or any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the solar operator, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the solar operator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the solar operator for any other expenses, loss, damages, penalty or costs incurred by the solar operator,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the solar operator, its officers, servants, contractors or agents.

(3) The solar operator must give the undertaker reasonable notice of any claim or demand pursuant to sub-paragraph (1) above and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Co-operation**

**73.** Where in consequence of the proposed construction of any of the authorised development or any specified work, the solar operator makes requirements for the protection or removal of apparatus under paragraphs 69(4) or 69(5), the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and/or any specified work and taking into account the need to ensure the safe and efficient and economic operation of the apparatus and the solar operator shall use its best endeavours to co-operate with the undertaker for that purpose.

### **Arbitration**

**74.** Any difference or dispute arising between the undertaker and the solar operator under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the solar operator, be determined by arbitration in accordance with article 38 (arbitration).

### **Enactments and agreements**

**75.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the solar operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Compulsory acquisition and temporary use**

**76.**—(1) The rights set out in sub-paragraph (2) are not exercisable by the undertaker over the solar farm site if—

- (a) a diversionary agreement has been concluded; and
- (b) a diversionary planning permission has been granted which authorises the construction of a gas pipeline over the route to which the diversionary agreement applies.

(2) Sub-paragraph (1) applies to the following rights—

- (a) article 17 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights etc);
- (c) article 22 (acquisition of subsoil only);
- (d) article 24 (private rights);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised development);
- (g) article 27 (temporary use of land for maintaining the authorised development); and
- (h) article 28 (statutory undertakers).

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant authority must give notice to the undertaker of their decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(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).

(5) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the undertaker must at the same time as making the application send a copy of the materials provided in support of the application to NRW and, in respect of requirement 12(1) only, Dŵr Cymru Welsh Water and must draw NRW and Dŵr Cymru Welsh Water's attention to the procedure set out in paragraphs 1 to 3 of this Schedule and state that any comments must be provided to the relevant planning authority within 21 days if they are to be considered by the relevant planning authority.

(6) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the relevant planning authority is not required to consider comments received from NRW and, in respect of requirement 12(1) only, Dŵr Cymru Welsh Water more than 21 days after the date of the application.

(7) Where an application is made to the relevant planning authority for any consent, agreement or approval required by an article or requirement in this Order and the relevant planning authority intends to consult NRW and Dŵr Cymru Welsh Water in relation to that application, the undertaker must as soon as reasonably practicable comply with any direction from the relevant planning authority to provide a copy of the materials provided in support of the application to each body specified in the direction.

## **Further information**

2.—(1) In relation to any part of the application to which this Schedule applies, the relevant authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary the relevant authority must, within twenty one days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant authority does not give such notification within this twenty one day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and this paragraph 2.

## **Appeals**

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person as soon as reasonably practicable 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;
- (c) The relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty six days of the appointment of the person pursuant to sub-paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within twenty six days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within forty days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within twelve days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within fourteen days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 (authorised development) of this Order as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

**4.** In this Schedule “relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Wrexham Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station of up to 299 MWe. The Order would permit the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Connect Wrexham, 16 Lord Street, Wrexham LL11 1LG.

**201X No. XXX**

**INFRASTRUCTURE PLANNING**

The Wrexham Gas Fired Generating Station Order 201[X]

Pinsent Masons LLP

30 Crown Place

Earl Street

London

EC2A 4ES

January 2017