

3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: wrexhamenergy@pins.gsi.gov.uk

Wrexham Power Limited
Sir Stanley Clarke House
7 Ridgeway
Quinton Business Park
Birmingham
B32 1AF

Your Ref:

Our Ref: EN010055

Date: 27 August 2015

Dear Mr Craddick

Request by Wrexham Power Limited for comments on draft application documents for an Order Granting Development Consent for the Wrexham Energy Centre

This letter serves to provide comments on a suite of draft documents submitted to the Planning Inspectorate (the Inspectorate) (received 5 August 2015), namely:

- Development Consent Order (DCO)
- Explanatory Memorandum (EM)
- Consultation Report (CR)
- Book of Reference
- Land and Works Plans
- Chapter 4 of the Environmental Statement ('The Proposed Development')

These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) (PA 2008) or by the Secretary of State on any submitted application. However, I hope you will find them useful.

Following a review of the submitted draft application documents the Inspectorate considers that broadly the draft application documents are clear but that work is required particularly on the consultation report and development consent order to ensure we can verify that your consultation duties have been carried out in line with requirements, and that the application is of a satisfactory standard. In addition, the Inspectorate has sought to identify as many issues as possible now, in order to reduce the time taken to address these issues in the event of an examination, while recognising that the documents are still in draft form.

The Inspectorate advises the applicant to consider the outcomes of the recent Hirwaun Power Project decision on 23 July 2015, particularly the removal from the Order by the SoS of the gas connection and related above ground installation. The SoS is clear in her view that although the gas connection is necessary for the development, it does not form part of the generating station and is not of the limited

type of associated development that can be consented under the PA2008 in Wales and thus falls outside of the PA2008 regime. Without prejudice to any examination or decision, given the stance taken by the SoS on this issue for the Hirwaun Power Project, the Inspectorate does not consider that there is sufficient justification at present in the Explanatory Memorandum (EM) for the approach taken and, if accepted, this issue may require additional examination time and / or lead to potential DCO changes by the Secretary of State should she be minded to grant consent.

If the applicant decides to continue to pursue this approach to obtaining planning permission for the gas connection, the Inspectorate advises that the application EM contains a more detailed justification for doing so than is currently the case. As a general point, the Inspectorate draws the applicant's attention to section 15 of [PINS Advice Note 15 – Drafting Development Consent Orders](#). The EM is a key part of the application documents which provides an opportunity to explain and justify the detailed provisions of the DCO, and we advise that you make greater use of this to help avoid the need for detailed drafting questions during the limited period of the examination.

The Inspectorate notes draft requirement 18 regarding Combined Heat and Power (CHP). The EM refers to the North Killingholme Order requirement 28 as the basis of this requirement; however the Inspectorate notes that the North Killingholme requirement 27 also relating to CHP has not been included in the draft DCO. The developer should be aware that in the [Knottingley Power Project decision](#), the SoS added two requirements relating to CHP, equivalent to requirements 27 and 28 of North Killingholme. In addition, the Knottingley and North Killingholme requirements both included references to '*a good quality CHP scheme in accordance with the principles set out in the CHPQA Standard Issue 3*' which have been removed in the draft. In light of this the Inspectorate advises the applicant to justify in the EM the divergence in the wording of the draft Order from other made orders.

The Inspectorate requests confirmation that the applicant will be submitting a CHP report alongside the application to demonstrate accordance with the National Policy Statement EN-1 (to demonstrate consideration of opportunities for CHP from the earliest point; provide an audit trail of discussions between themselves and prospective customers; and provide details of future heat requirements in the area).

The Inspectorate notes the applicant's intention not to submit their draft Funding Statement, Statement of Reasons, and list of other consents and licences before submission, and notes that without having seen these we are limited in our ability to advise on any risks for acceptance and examination.

Please do not hesitate to contact me should you have any queries regarding the comments provided.

Yours sincerely,

Stephanie Newman

Stephanie Newman

Annex 1 Drafting queries on draft DCO

The following table provides comments from the Inspectorate on the draft DCO submitted on 5 August 2015. These queries relate solely to matters raised by the drafting of the DCO, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

Abbreviations used			
PA2008	<i>The Planning Act 2008</i>	LPA	<i>Local planning authority</i>
A	<i>Article</i>	MP	<i>Model Provision (in the MP Order)</i>
CHP	<i>Combined Heat and Power</i>	MP Order	<i>the former Infrastructure Planning (Model Provisions)(England and Wales) Order 2009</i>
DCO	<i>Draft DCO (5 August 2015)</i>	NPS	<i>National Policy Statement</i>
EM	<i>Explanatory Memorandum (5 August 2015)</i>	R	<i>Requirement</i>
ES	<i>Environmental Statement</i>	SI	<i>Statutory Instrument</i>
LIR	<i>Local Impact Report</i>	SoS	<i>Secretary of State</i>

Table 1. Inspectorate comments relating to draft DCO (5 August 2015)

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
1.	General		Will a list be maintained of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the Examining authority before the close of the examination?
2.	General		Can the applicant confirm (a) that it proposes to follow the Advice contained in PINS Advice Note 15 – Drafting Development Consent Orders and (b) that any departures from that advice will be explained in the EM to be submitted with the application?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
3.	General		In particular, can the applicant note section 15 of Advice Note 15 dealing with the EM; the EM is a key part of the application documents but one which, unfortunately, frequently only provides a cursory summary of the DCO. It is an opportunity to explain and justify the detailed provisions of the DCO and can avoid the need for detailed drafting questions during the limited period of the examination
4.	General		The DCO is proposed to be a SI and so should follow the statutory drafting conventions. Will the applicant confirm that the DCO (and any subsequent revisions) are (and will be) in the form required by the statutory instrument template (see Planning Inspectorate Advice Note 13) and validated as such using the current SI template, including footnotes to statutory references as necessary?
5.	General		In the next version, to comply with current SI drafting practice, can the word "shall" be replaced by "must", "is to be" "are to be" etc where the context permits?
6.	General		Can the applicant confirm that any subsequent versions of the DCO submitted after the application version: <ul style="list-style-type: none"> • will be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes, with Word comments briefly outlining the reason for the change? • will be supported by a report of the outcome of validating that version of the DCO through the Publishing section of the legislation.gov.uk website?
7.	General		Can any plans referred to in A2 each be identified by Drawing and Revision Numbers in the application and subsequent versions of the draft DCO?
8.	Short Title		As the SoS has recently expressed the view that a DCO should not appear to be granted to a particular undertaker, can the title of the Order be amended so as not to refer to the specific undertaker ("Wrexham Power") but e.g. to the geographical location of the project?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
9.	Preamble		Can the preamble be amended in the next version to reflect the precedents set by two recently made DCOs, Hirwaun and Progress ?
10.	A1	Citation and commencement	See query 7 above
11.	A2(1)	<i>"commence" means, save for the permitted preliminary works, the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains <u>where development begins</u>), 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;</i>	<i>"...which explains <u>when</u> development begins)...."?</i>
12.	A2(1)	<i>"date of final commissioning" means the date on which the authorised development <u>commences operation by generating power on a commercial basis</u></i>	Is the use of "commences" appropriate in this definition given that "commence" is given a specific meaning in A2(1)? As this definition is used e.g. to establish the start of the "maintenance period" for the purposes of A27, how is "commences operation by generating power on a commercial basis" to be objectively ascertained by a third party, e.g. a landowner attempting to confirm that he was properly served with notice under A26(2) or A27(3)?
13.	A2(1)	<i>"<u>illustrative foul and surface water drainage plan</u>" means the <u>illustrative foul and surface water drainage strategy plan</u> with reference number [] and submitted with the application and regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009</i>	Should the underlined phrases be the same?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
14.	A2(1)	<p><i>"maintain" includes inspect, repair, <u>adjust</u>, <u>alter</u>, <u>remove</u>, refurbish, <u>reconstruct</u>, <u>replace</u> and <u>improve</u> and "maintenance" and "maintaining" are to be construed accordingly</i></p> <p><i>"maintain" includes inspect, repair, <u>adjust</u>, <u>alter</u>, <u>remove</u>, refurbish, <u>reconstruct</u>, <u>replace</u> and <u>improve</u> to the extent that the same are unlikely to give rise to any materially new or materially different environmental effects as identified in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly</i></p>	<p><i>"maintain" -</i></p> <ul style="list-style-type: none"> • what is the justification for this extended definition (the underlined words seem to extend the normal meaning of 'maintain')? • have the activities in the definition all been covered by the ES? Can the application EM identify appropriate references within the ES and also refer to the advice given in section 20 of PINS Advice Note 15?
15.	A2(1)	<i>"this Order" means the Wrexham Power (Gas Fired Power Station) Order 201[*];</i>	See query 7
16.	A2(1)	<i>"Order land" means the land required for, or affected by, the authorised development shown on the <u>land plan</u> and described in the book of reference;</i>	<p><i>"...land <u>plans</u>..."?</i></p> <p>Can the application EM describe which, if any, "Order land" is outside the "Order limits"?</p> <p>Having regard to the (different) definition of Order land in the MPs, can the application EM describe any Order land which is "required for, or affected by the authorised development" but which is not to be acquired?</p>
17.	A2(1)	<i>"permitted preliminary works" means [];</i>	<p>The only reference to this phrase elsewhere in the DCO is in the definition of "commence", so it is assumed that this definition will list works that will not count as commencement of development e.g. in relation to requirements for pre-commencement approvals by the LPA. Can the applicant justify in the application EM why the listed works should not be treated as commencing the development?</p>

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
18.	A2(1)	"statutory undertaker" means any person falling within section 127(8) of the 2008 Act and shall include a public communications provider <u>as defined by the Communications Act 2003</u>	Should this read "...as defined by section 151(1) of the Communications Act 2003"?
19.	A2(1)	"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street <u>or between two carriageways, and includes any footpath and "street" includes any part of a street;</u>	Can the application EM explain why the particular circumstances of this DCO require that the definition in s48 needs to be extended by the underlined words?
20.	A2(1)	"undertaker" means <u>Wrexham Energy Limited</u> , which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order	Should this be a reference to <u>Wrexham Power Limited</u> as defined later?
21.	A2(2)	(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order to the creation or acquisition of new rights include the <u>imposition of restrictive covenants</u> which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order and references in this Order to the <u>imposition of restrictions</u> are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are created and acquired under this Order.	<p>The draft EM does no more than state the obvious, that the definition is expanded, without providing any explanation or justification. Can the application EM explain and justify these extensions to the normal meaning of rights, and in particular in relation to 'the imposition of restrictions', the reasons for including them and describe what exactly is proposed?</p> <p>Does the "imposition of restrictions" equate to the "imposition of restrictive covenants" (if so the use of different phrases is confusing)</p>

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
22.	A3(2)	<i>(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered line <u>or numbered area</u> shown on the works plans.</i>	"...or within the corresponding numbered area...."?
23.	A3(3)	<i>(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plans <u>or within the corresponding numbered area</u> shown on the works plans up to the limits of deviation</i>	"...or <u>from</u> the corresponding numbered area..."?
24.	A4(1)	<i>4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to <u>and, subject to the requirements, may at any time</u> maintain the authorised development.</i>	Why are the underlined words necessary?
25.	A6(1)	<i>6.—(1) — Subject to paragraph (2) <u>and article 7 (consent to transfer benefit of Order)</u>, the provisions of this Order have effect solely for the benefit of the undertaker.</i>	As 'the undertaker' is defined to include persons with the benefit of the Order under A7, are the underlined words necessary?
26.	A7(4)	Consent to transfer benefit of the Order	Has the applicant seen the Hirwaun DCO in which the SoS amended the equivalent provision to limit the types of statutory undertaker to whom transfers or grants could be made without SoS consent? The SoS also added a paragraph requiring the SoS to be notified of transfers or grants where consent was not needed.

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
27.	A8	<i>8. Subject to the modifications set out in Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) 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.</i>	Can the application EM identify any precedents for this Article? Should it be extended to include references to the imposition of restrictive covenants?
28.	A10	Power to alter the layout etc of streets	Can the application EM identify any precedents for this Article? Can the application EM indicate whether this Article is supported by the street authority?
29.	A10(1)	<i>10.—(1) The undertaker may for the purposes of the authorised development alter the layout of <u>or carry out any works in the street in the case of permanent works</u> as specified in column (2) of Schedule 4 (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).</i>	Inclusion of "or carry out works in" seems to duplicate the power in A11, without the protections of that article. Should it be deleted? Should this paragraph read "..... for the purposes of the authorised development <u>permanently</u> alter the layout of any street specified in column (2)..."?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
30.	A10(2)	<i>(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing 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—</i>	Is this paragraph intended only to permit temporary alterations (as is implied by A10 (3))? Should the paragraph read: "... <u>In addition to the specific power conferred by ...maintaining the authorised development temporarily alter the layout...</u> "
31.	A10(5)	<i>(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of eight weeks beginning with <u>the date on which the application was made</u> (or such longer period as may be agreed with the undertaker in writing), it is deemed to have granted consent.</i>	Should this read: "...the date on which the application was <u>received</u> ..."?
32.	A11(4)	<i>(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.</i>	"apparatus" is already defined in A2(1); delete this paragraph?
33.	A12(5)	<i>(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; <u>and</u> (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.</i>	"...and..." should be "...or..."?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
34.	A12(6)	<i>(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.</i>	This paragraph has the same effect as A10(5); should the same wording be used in all similar cases?
35.	A13	<i>13.—(1) The undertaker may, for the purposes of the authorised development— (a) form and layout the permanent means of access, or improve existing means of access, in the <u>location</u> specified in Schedule 4 (streets subject to permanent alteration of layout); and (b) with the <u>approval</u> of the relevant planning authority after consultation with the <u>highway authority</u>, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</i>	<i>"...<u>locations</u>..."?</i> <i>"...with the <u>consent</u>...after consultation with the <u>street authority</u>...."?</i>
36.	A15(6)	<i>(6) This article does not authorise any water discharge activities or groundwater activities for which a <u>licence</u> is required pursuant to regulation 12(b) of the Environmental Permitting (England and Wales) Regulations 2010(</i>	<i>"...for which a <u>permit</u> is required under Regulation 12(1)(b)..."?</i>
37.	A16(5)	Authority to survey and investigate the land	This paragraph provides for deemed consent of the highway or street authority, as with A10(5) and A12(6), but there is no provision in the Article for such consent to be sought?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
38.	A16(6)	<i>(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, <u>Part 1</u> (determination of questions of disputed compensation) of the 1961 Act.</i>	"... <u>under</u> Part 1..."?
39.	A17	<i>17.—(1) The undertaker may acquire compulsorily so much of the Order land <u>and impose the restrictions</u> affecting the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.</i>	Can the application EM explain and justify the imposition of restrictions referred to in this Article (the draft EM does not do so)?
40.	A18(1), A18(3) & A18(4)	<i>(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights or <u>impose a restriction</u> described in the book of reference and shown on the land plans.</i>	Does the reference to imposition of a restriction duplicate the similar provision in A17, or is this intended to refer specifically to restrictive covenants?
41.	A18(2)	<i>(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 and acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not <u>to be</u> required to acquire a greater interest in that land.</i>	"...where the undertaker creates <u>or</u> acquires...the undertaker is <u>not required</u> to acquire..."?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
42.	A18(4)	<i>(4) In any case where the creation and acquisition of new rights or the imposition of a restriction under <u>paragraph 17(1)</u> 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.</i>	Should this be a reference to paragraph 18(1)?
43.	A20(2)	<i>(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) <u>must cease</u> 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.</i>	"The authority conferred by article 25..... <u>ceases</u> at the end of the period..."?
44.	A22(3)	<i>(3) Paragraph (2) <u>must</u> 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</i>	"(3) Paragraph (2) <u>does</u> not prevent article 23..."?
45.	A24	Private rights	The Article purports to 'extinguish' restrictive covenants. Is this the correct term, where the intention is presumably to free the land from the burden of any restrictive covenants affecting it?
46.	A24(6)	<i>(6) This article does not apply in relation to any right to which article 28 (statutory undertakers) applies.</i>	As in the Hirwaun and Progress DCOs, should the rights subject to s138 of the 2008 Act also be excluded from the application of this Article? If not, why not?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
47.	A25	<i>Rights under or over streets</i>	The draft EM states that this is a Model Provision, but the MP is slightly extended. Can the application EM be more accurate?
48.	A26(1)(ii)	<p><i>(i) so much of the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;</i></p> <p><i>(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 requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);</i></p>	Temporary possession for express purposes set out in Schedule 8 may be reasonable; is a general power to take possession for unspecified purposes justifiable? Can the application EM justify is it needed in the particular circumstances of this DCO?
49.	A26(2)	<i>(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.</i>	Should the paragraph include provision requiring the notice to state the date of final commissioning so that the recipient can determine the maximum period of temporary possession under A26(3)?
50.	A26(13?)	<i>Temporary use of land for carrying out the authorised development</i>	A35 of the Thames Tideway Order contains a paragraph stating that the undertaker may not exercise these powers after completion of construction; A26 should contain a similar statement?
51.	A27(3)	<i>(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.</i>	Should the paragraph include provision requiring the notice to state the date of final commissioning so that the recipient can identify the 'maintenance period'?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
52.	A27(4)	<i>(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.</i>	Although this article follows the MP, its effect is that the undertaker may remain in possession after the maintenance period provided notice is served during it. Should the article include a 'longstop' provision limiting the right to possession to the maintenance period? If not, why not?
53.	A28	Statutory undertakers	The article refers to Protective Provisions in Schedule 7, which is blank in the draft. Can the applicant ensure that the advice in section 3 of PINS Advice Note 15 – Drafting Development Consent Orders is followed in the application DCO?
54.	A29	<i>29. Where a street is temporarily altered or diverted or its use is temporarily prohibited or restricted under article 10 (power to alter layout, etc of streets), article 12 (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 7 (protective provisions), as if this Order had not been made.</i>	Why is this article limited to temporary changes? Article 10 enables permanent changes yet there is no equivalent provision to MP32 paragraphs (2)-(8) for the relocation of apparatus in streets that might be effectively be stopped-up by virtue of the permanent changes?
55.	A30(3)	<i>(3) This article shall not have effect in relation to apparatus to which article 29 (apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction) <u>or</u> <u>Part 3 of the 1991 Act.</u></i>	"...or Part 3 of the 1991 Act <u>applies.</u> "?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
56.	A31(4)	<i>(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.</i>	Would this paragraph be better expressed as follows (based on the Brechfa Forest Windfarm DCO , A15): <i>(4) Subject to paragraph (2), the undertaker may remove any hedgerows within the Order limits if it reasonably believes it to be necessary to do so for the purposes of the carrying out of the authorised development.</i>
57.	A31(5)	<i>(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997</i>	Is this paragraph necessary, as there is no definition of "hedgerow" in the Hedgerows Regulations ? Should the DCO expressly disapply or modify the Hedgerows Regulations ?
58.	A34	<i>Disapplication of legislative provisions</i>	Can the application EM provide justification (in the particular circumstances of this DCO) for the disapplication of each of the provisions referred to in this article?
59.	A35	<i>Protective provisions</i>	Can the applicant note the advice in section 3 of PINS Advice Note 15 – Drafting Development Consent Orders ?
60.	A36	<i>Certification</i>	Should the reference to the 'design and access statement' actually be to the 'design objectives statement'?
61.	A38	<i>Procedure in relation to certain approvals</i>	Does A38(3) make similar earlier provisions unnecessary (e.g. A10(5) and A12(6))? Can the application EM explain and justify the purpose of A38(4)?
62.	Schedule 1 (Work 1A)	<i>(a) one gas turbine building with up to two gas turbines, and one steam turbine building with one steam turbine, each connected to its own generator with a combined <u>rated electrical output</u> of up to 299 MWe;</i>	In both the Hirwaun and Progress DCOs, the SoS accepted an ExA recommendation to refer to " <u>gross rated electrical output</u> " in the description of the Work, and to include a definition of that phrase (and "MWe") within A2(1). Is there any reason why that approach should not be followed in this case?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
63.	Schedule 1 (Work 2)		In the recent Hirwaun and Progress decisions the SoS has taken the view that gas connections are associated development which cannot be granted development consent in Wales, notwithstanding the argument put forward that the generating station could not operate without it. If the applicant nonetheless proposes to include the gas connection in the DCO, can the application EM contain a more detailed justification for doing so?
64.	R3	<i>3.—(1) No authorised development may commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority. The landscaping scheme must be substantially in accordance with the <u>illustrative landscaping plan</u> and must include details of all proposed hard and soft landscaping works, including—</i>	The 'illustrative landscaping plan' is not defined in A2(1) or elsewhere? In view of the inclusion of removal of hedgerows in A31, should the details to be included in the landscaping scheme include details of hedgerows to be removed or retained?
65.	R4(1)(q)	<i>(q) save in respect of numbered work 1, a protocol in the event that unexpected contaminated land is identified during ground investigation or construction.</i>	Can the application EM explain why the generating station site is excluded from the need for a protocol?
66.	R6(2)	<i>6.—(1) No piling may commence until a piling <u>strategy</u> 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 <u>details</u></i>	"...with the approved <u>strategy</u> ."?

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
67.	R11(1)	<i>11.—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. <u>Such operational travel plan to include—</u> (a) objectives and targets; and (b) measures and initiatives to promote sustainable travel.</i>	<i>"<u>The operational travel plan is to include.....</u>"?</i>
68.	R13(1)	<i>13.—(1) Numbered work 1 must not commence until written details of the surface and foul water drainage system for the operation of the authorised development has been submitted to and approved by the relevant planning authority. The surface and foul water drainage system must be substantially in accordance with the <u>illustrative foul and surface water drainage strategy plan</u>.</i>	Should this paragraph refer instead to the 'illustrative foul and surface water drainage plan' which is what is defined in A2(1)?
69.	R18	Combined Heat and Power	The EM refers to the North Killingholme Order R28 as the basis of this requirement, however R27 also relating to CHP has not been included in the draft DCO. The developer should be aware that in the Knottingley Power Project decision , the SoS added two requirements relating to CHP, equivalent to R27 and R28 of North Killingholme. In addition, the Knottingley and North Killingholme requirements both included references to 'a good quality CHP scheme in accordance with the principles set out in the CHPQA Standard Issue 3' which have been removed in the draft. See also Annex 2, item 7.

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
70.	R19(1)	<p>19.—(1) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, within twenty four months of the Order <u>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)</u>, a scheme for the demolition and removal of Work No. 1 must be submitted to the relevant planning authority.</p>	<p>How is the relevant planning authority to ascertain generation has ceased? Should there be a notice provision?</p>
71.	Schedule 8 Paragraph 3(2)	<p>((2) The appeal process is to be as follows—</p> <p>(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 <u>any requirement consultee</u>;</p> <p>(b) The Secretary of State <u>must appoint a person within twenty days after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent</u>;</p>	<p>As the Schedule relates to approvals under articles and requirements, should the reference be to "...and any <u>article or requirement consultee</u>"?</p> <p>The SoS may prefer not to be tied to appointing a person within a period of twenty days. Should this requirement instead be that the SoS "...must as soon as reasonably practicable after receiving the appeal documentation appoint a person to determine the appeal and..." ..."? </p> <p>The 'start date' is undefined; can a definition be included in the application DCO?</p> <p>The 'appeal parties' are undefined?</p>

Q No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Question
		<p>(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 <u>start date</u> 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;</p> <p>(d) The <u>appeal parties</u> must make any counter-submissions to the appointed person within twenty six days of receipt of written representations pursuant to sub-paragraph (c) above;</p> <p>and</p> <p>(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).</p> <p>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.</p>	
72.	Schedule 8 Paragraph 3(10)	<p>(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.</p>	<p>Whilst it is unlikely that the SoS would seek unreasonable costs, it is also unlikely that she would agree to a provision that gave scope for argument about the reasonableness of her costs – where the dispute was not of her making</p>

Annex 2 Comments on Chapter 4 of the Environmental Statement ('The Proposed Development')

The table below summarises the points which the Inspectorate suggests should be clarified in the submitted version of the ES. Our main concern is that where the parameters used in the ES differ from or are not mentioned in the DCO it is difficult to understand what the basis of the assessment in the ES is and whether it reflects the consent being sought under the DCO.

Table 2. Inspectorate comments relating to draft ES – Chapter 4 (5 August 2015)

Item	Comment
1	Paragraph 4.77 of the ES explains that the turbine buildings would be equipped with overhead gantry cranes for maintenance. The likely dimensions of these cranes are not described in the draft ES or the draft DCO.
2	Schedule 1 of the DCO refers to the following components for which the characteristics are not clearly described in the ES: <ul style="list-style-type: none"> • Telemetry apparatus • Auxiliary distilled fuel oil generator
3	The relevant dimensions/characteristics for the following development components are identified in the ES but not in the DCO: <ul style="list-style-type: none"> • Parking (including the number of spaces) • Foul water pumping station • Permanent overall easement width to the gas pipeline • Minimum depth to the gas pipeline
4	Both the ES and the DCO refer to the proposed surface water ponds in the north eastern corner of the site, however only the DCO states that these would have a total minimum capacity of 2,085m ³ .
5	The ES states that the maximum discharge rate into the local watercourse network would be 12.2 litres per second, whereas the DCO refers to a discharge rate of 13.2 litres per second.
6	The ES states that the area for the Above Ground Installation would be 47m x 47m but the DCO states that the area would be 40m x 40m.
7	Paragraph 4.106 of the ES states that it assesses a CCGT power station that is 'CHP ready' through the provision of the necessary steam offtake and space for the related heat interface building. It is not clear how the proposed dimensions for this building shown in Table 4.1 of the ES) have been determined. In addition, draft Requirement 18 includes provision for the approval by the relevant planning authority of a scheme for the necessary plant and pipework suggesting that the dimensions of the plant and pipework would not be confirmed until this requirement was discharged. Without prejudice to any examination or decision, the applicant should be aware of the risk of the flexibility sought in relation to this work becoming an issue during examination.
8	The sizes for the proposed laydown areas are described in the ES but not in the DCO.

9	Requirement 3 requires that the proposed landscaping scheme must be substantially in accordance with the illustrative landscaping plan within the ES. The ES also describes this plan as illustrative. The applicant may wish to consider whether it is possible to be substantially in accordance with plans which are only illustrative.
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Annex 3 Comments on the Consultation Report

The Inspectorate considers that overall the structure of the consultation report is clear and the separate strands of consultation have been defined. However, it currently lacks key information, including appendices, for us to have confidence that you have had regard to responses received, and in the context of the correspondence we have received from consultees in the past, without this there remains a risk that we cannot verify that the requirements of section 55 of the Act with regard to consultation have been met.

Please ensure that all correct appendices are included with the application, and ensure that they tally with the table of contents. As the appendices themselves are substantial in size, for ease of reference it would be beneficial if these are provided as separate document(s) alongside the CR.

Section 42

As appendices 5 (Schedule of Section 42 consultees) and 6 (Section 42 notification letter) were not included, the Inspectorate was unable to confirm all prescribed persons were notified in accordance with the Act.

Page 30, para 9.3.5 lists the documents sent along with the s42 notification letter. The s42 letter submitted to PINS as part of s46 consultation lists a copy of the s48 notice as part of s42 'bundle' sent to consultees; para 9.3.5 does not include this in the list of documents. Can the applicant confirm whether the s48 notice was included in the bundle of consultation documents?

Section 43

Page 30 lists Wrexham County Borough Council as the 'B' local authority and Denbighshire, Flintshire, Cheshire West & Chester, Shropshire and Powys as 'A' local authorities. The Inspectorate notes that Powys, Shropshire, and Flintshire were not listed in the s42 list of consultees submitted to the Inspectorate by the applicant on 02 July 2015.

Page 30, 9.3.4 notes that '*There were relevant Category C or Category D local authorities*'. The Inspectorate requests the applicant identifies these Authorities and confirms in the report that they were consulted.

Section 44

Page 33, para 9.6.9 states that the '*s42 (10 (d)) list has a limited number of differences to the list of parties included within the Book of Reference*'. The Inspectorate welcomes the accompanying table setting out the reasons for the discrepancy and the action being taken by Wrexham Power Limited, and requests an update on the progress towards and/or outcomes of these actions at the review meeting.

Section 47

The Statement of Community Consultation (SoCC) is listed in the table of contents as

appendix 10, but it is not included within the appendices, nor is the newspaper SoCC notice. The applicant is requested to provide both, ensuring that copies of the notices are included for both days on which the SoCC notice was published.

The list of appendices includes a letter sent to Wrexham County Borough Council (WCBC) on the draft SoCC. The Inspectorate recommends that the applicant also provides a copy of the draft SoCC as initially sent to WCBC. This is not statutory requirement but is recommended (see Advice Note 14, p.4).

Section 48

The Section 48 notices are listed as appendices in the table of contents but are not actually provided. The Inspectorate requests that the applicant provides a copy of the notice as it appeared in the statutory publications over all dates required (APFP Regulations, Article 4).

Section 49

Chapter 15 '*Duty to take account of responses to consultation and publicity*' states that s49 of the PA2008 requires applicants to have regard of relevant responses made by a person under s42, in response to s47 consultation and in response to s48 publicity. In order to fulfil this requirement this section needs to provide more detail. Please provide a written summary of how the applicant has had regard to responses received from statutory consultation (it is possible to reference tables of responses; however more information is required here).

Please note the following minor corrections:

Location in CR	Comment
Table of Contents	Appendices 28 and 29, as well as titles of same appendices on p.84 & 210 in draft CR states ' <i>47/48 consultees</i> ' – please amend titles to ' s.47/48 consultees' to avoid confusion
p.8, para 2.4.2	' <i>WPL...published its SoCC notice on 5 and 7 July 2014</i> '. It would be helpful if the applicant could include a reference to the appendix containing the newspaper Statement of Community Consultation Notice.
p.9, para 2.5.6	– it may be helpful to refer to appendices here: (e.g., 'the s.48 notices as they appeared in London Gazette, Wrexham Leader (both dates) and Daily Telegraph have been provided in Appendices 1-4')
p.32, para 9.6.4	Grammar – ' <i>In some instances site notices were been erected to aid land ownership</i> '

p.33, para 9.6.6	<p><i>'Potential category 3 interests were identified by holding meetings between members of the project team and to discuss the areas and potential receptors outside the PEIR site boundary that may be significantly affected by the physical effects of the Scheme during construction and operation.'</i></p>
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Annex 4 Comments on the Land and Works Plans

The Inspectorate considers that overall the Land and Works Plans are clear and in accordance with the APFP Regulations. All works are within the order limits, and the Works are clearly shown as described in the draft DCO, Schedule 1. The plot numbers tally with the plots in the Book of Reference. The Inspectorate notes that an assessment of consistency between the Works Plans and the Statement of Reasons could not be done as no draft Statement of Reasons was submitted.

It is noted that the Crown Interest Land is included within the Land Plans but this is not differentiated on the plans. It would be helpful if the plans could be titled 'Land Plans including Crown Land' or similar, and these areas were to be differentiated in some way (eg through cross-hatching).

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.