

CCS Response to Applicants Response to Examining Authority's Second Written Questions

ExQ1	Applicants Response (not in full but verbatim when quotation marks used)	CCS Response
2.0	Draft Development Consent Order	
2.7.2	<p>Commencement:</p> <p>“In relation to temporary agricultural fencing, typically this is required for a period of 12 months for construction and up to 3 years during aftercare, and this is a matter which the Applicant would seek to discuss and agree with the relevant land owners.”</p> <p>...</p> <p>“Requirement 5(3) deals with the removal of any temporary fencing, which must be undertaken within three months of the end of construction of the relevant work. This applies to temporary fencing erected pursuant to the exclusions in the definition of commence and any temporary fencing which has been approved by CCS under requirement 5.”</p>	<p>CCS welcomes the clarification provided within the definition of “commence”.</p> <p>However, CCS has three queries with regards to the removal of temporary fencing.</p> <p>Firstly, the applicant indicates that the temporary fencing would be required for 3 years after construction but this does not accord with Requirement 5(3) which requires removal within 3 months.</p> <p>Secondly, CCS requests clarification on how Requirement 5(3) controls fencing that does not form part of the authorised development as it is not specifically contained within the definition of Authorised Development in Schedule 1 (Work Nos. 1 – 5) and is specifically excluded from the definition of “commence”?</p> <p>Thirdly, Requirement 5(3) states that temporary fencing must be removed by the end of three months beginning with the date of completion of construction of the authorised development (i.e. the whole of the development).</p> <p>It does not state that the fencing has to be removed within 3 months of the end of construction of the <i>relevant work</i>, assuming that the temporary fencing associated with the site investigations etc are controlled by this Requirement in the first instance.</p>

<p>2.7.4</p>	<p>Crossings:</p> <p>“The draft DCO submitted for Deadline 4 has been updated to include parameters for the design of the road structure crossing the Welsh Water water main, see Schedule 2 Table 3 of the updated draft DCO, submitted at Deadline 4.”</p>	<p>CCS doesn't have any substantive issues with regards to the parameters include in Table 3 but have sought clarification on whether the maximum height of the structure includes the barrier height.</p> <p>CCS would also query whether the water main crossing structure needs to be explicitly set out in Work No. 2 of Schedule 1 as it is not defined within the Authorised Development and Table 3 refers back to the Authorised Development.</p>
<p>2.7.5</p>	<p>Requirement 9:</p> <p>“New habitats are being created to compensate for the loss of habitats during the construction phase of the Project. The newly created habitats will be monitored to feed into the management of the habitats to help ensure the successful establishment and ongoing functioning. While the newly created habitats will support a number of species, they are not being created solely for the purpose of species mitigation. The monitoring and management of newly created habitats is secured by the LEMS, and compliance with the approved ecological management plan and any timetable included is set out in Requirement 9(2).”</p> <p>...</p> <p>“As such, there is no need to include species or habitats monitoring within Requirement 9 Ecological Management Plan.”</p>	<p>CCS maintains that there needs to be a mechanism to ensure that ongoing management and monitoring is in place and is effective for the lifetime of the project and the current omission of a review in Requirement 9 is flawed.</p> <p>Section 4.7.2. of the Outline LEMP sets out the management aims of the LEMP which include:</p> <ul style="list-style-type: none"> • Create, maintain and enhance habitats of value to wildlife to provide benefits for the local environment and biodiversity; • Create marshy habitats in conjunction with the attenuation areas for amphibians and invertebrates (including the marsh fritillary); and, • Establish a flexible management and maintenance regime able to respond to changing needs or objectives. <p>These aims are not secured currently.</p> <p>Section 4.8.2 states that management of habitat enhancement measures during the operational phase will be secured by requirement in the DCO and via appropriate grazing and management agreements but this is clearly not the case.</p> <p>Sections 8.8.36 – 8.8.38 of the ES refer to monitoring and management but these are not secured without a review mechanism included in this Requirement. If there is no monitoring and review, CCS would have no opportunity to seek</p>

		changes to rectify identified deficiencies in the mitigation.
2.7.6	<p>Operational Time Limit:</p> <p>“A Statement of Common Ground has been agreed with CCS on this matter. Please refer to the updated Statement of Common Ground as submitted for Deadline 3 on 21 December, 2018.”</p>	<p>CCS wishes to clarify that the SoCG submitted at Deadline 3 did not cover the matter of noise that was raised in the Environmental Matters Issues Specific Hearing but discussions have been progressed since Deadline 3.</p> <p>The approach taken by the applicant is considered to be acceptable now that the rationale for the ratings has been explained and as a result, CCS do not consider that the levels indicated would result in any noise issues to surrounding properties.</p>
2.7.7.	<p>Requirement 27 (now Requirement 28):</p> <p>The draft requirement has been amended for Deadline 4 and makes clear that CCS’ written approval of the decommissioning strategy is required. Requirement 28(3) provides for implementation in accordance with the approved strategy including the implementation timetable.</p> <p>Requirement 28(4) includes a positive obligation on the undertaker to submit applications for any other consents required for decommissioning in accordance with the programme for submission approved by the relevant planning authority.</p> <p>The applicant considers that these amendments ensure that the planning authority will be properly informed of the scope of additional consents required, and will have a binding timetable for submission of those consents which the undertaker will be obliged to meet.</p>	<p>CCS welcomes the inclusion of the implementation timetable.</p> <p>However, CCS does not consider that the positive obligation included in Requirement 28(4) overcomes concerns with regard to the enforceability of this Requirement. Even if they apply, it doesn’t mean that the application is under a positive obligation to actively seek approval.</p> <p>In any event, the applicant would only be obliged to comply with the “binding timetable” <i>subject to obtaining the necessary consents</i>.</p> <p>Requirement 28(4) only partially progresses the issue. It has been included because the applicant acknowledges that the requirement is deficient in construction and unenforceable.</p> <p>The clear and obvious resolution to this issue is to omit “subject to obtaining the necessary consents” from Requirement 28(3).</p> <p>This ensures that the Requirement is enforceable and the LPA can consider any subsequent issues as and when they arise, taking into account their various statutory duties.</p>

		The applicant has indicated previously that they are seeking to limit their liability in the event that one / more of these consents could not be obtained reinforcing this issue (see applicant's Response to CCS Local Impact Report – Reference 21.13 on P44– Deadline 2 submission).
2.12	Water Environment	
2.12.1	<p>“The proposed attenuation pond is part of the design solution and there is therefore an incentive to carry out regular maintenance to ensure continuing operation to design performance standards. Maintenance responsibility for the attenuation pond and the development of a Maintenance Plan and Schedule for the asset will be set out at detailed design stage. Maintenance activities will be in accordance with current best practice set out in the CIRIA SuDS Manual (C753) and as a minimum will include the monthly inspection of all hydraulic structures and the removal of litter and debris from the pond.”</p>	<p>CCS considers that details of ongoing management should be provided as part of Requirement 6(1) which requires inter alia...means of pollution control and proposals for management and maintenance...</p> <p>Requirement 6(2) requires the approved details to be implemented going forward.</p>