



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Application by Snowdonia Pumped Hydro Limited for an Order Granting Development Consent for the Glyn Rhonwy Pumped Storage Scheme

Agenda for the issue specific hearing on the draft Development Consent Order to be held on 18 May 2016

This document sets out the arrangements and agenda for the issue specific hearing on the draft Development Consent Order (DCO) that was notified by the Examining Authority (ExA) on 18 April 2016.

Date: Wednesday 18 May 2016

Time: 9:30am, room open from 9:00am

Venue: Mynydd Gwefru Electric Mountain, Llanberis, Gwynedd, LL55 4UR

Parking: Pay and display parking is available at Lakeside, A4086, Gwynedd, Llanberis, LL55 4TA

The Electric Mountain Visitor Centre has been selected as the location for this hearing as it satisfies all of the Planning Inspectorate's programming requirements. The Visitor Centre is owned by First Hydro Company, which is responsible for the management and operation of the pumped storage plants at Dinorwig. First Hydro Company is part of GDF Suez Energy International. The applicant for the Glyn Rhonwy scheme, Snowdonia Pumped Hydro Limited, is responsible for the delivery of the Glyn Rhonwy scheme and is entirely independent of both GDF Suez and First Hydro Company.

Os oes angen, bydd cyfieithiad o'r Gymraeg i'r Saesneg ar gael drwy clustffonau.

Members of the Planning Inspectorate's case team will be available at the venue for half an hour before the hearing commences. They will be able to answer any questions about procedural matters or the running of the hearing.

Participation in and conduct of the hearing

All interested parties are invited to attend the hearing. Interested parties wishing to make a representation will be invited to do so at the ExA's discretion.

Guidance under the Planning Act 2008 and the Examination Procedure Rules provide that at hearings it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the hearing will therefore be led by the ExA.

The hearing will be conducted in a round table format. Cross examination of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case. For most matters the ExA will question persons directly.

Breaks may be taken during the hearing when convenient and as directed by the ExA.

The ExA may at any time adjust the running order, length of hearing or timings as required for items to be examined to the ExA's satisfaction.

An audio recording will be made of the hearing.

The audio recording and the ExA's summary of actions will be made available on our website (click [here](#)) as soon as practicable after the hearing. Any post-hearing documents or written summaries of oral representations requested by the ExA are to be received by deadline 4 at 12 noon on Thursday 26th May 2016.

Agenda

Time	Item
09.00	Room open and seating available
09.30	1. Welcome, opening remarks and introductions
	2. Draft DCO revision 4
	During the hearing the applicant will be invited to take the hearing through draft DCO revision 4, providing any clarifications that it feels are necessary and commenting on updates made since draft DCO revision 2.
	At relevant points the ExA will introduce queries (including those noted on the separate schedule) for the applicant or Gwynedd Council to address, as appropriate.
	Other interested parties wishing to make a representation on the draft DCO will be invited to do so at the ExA's discretion.
	3. Any other business and the ExA's closing remarks
	Close

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Schedule of the Examining Authority's queries for the issue specific hearing on the draft Development Consent Order to be held on 18 May 2016

With reference to item 2 of the agenda for the issue specific hearing on the draft Development Consent Order to be held on 18 May 2016.

Document references

- [EV-015] Action points arising from the issue specific hearing held on 9 March 2016
- [REP1-003] Applicant's table of responses to draft DCO drafting queries and action points
- [REP2-007] Applicant's draft DCO comparison - revision 2 to revision 3A
- [REP1-021] Gwynedd Council – comments on the draft DCO
- [REP1-026] Natural Resources Wales – comments on the draft DCO
- [REP2-005] Table of DCO amendments – revision 2 to revision 3A
- [REP2-011] Applicant's response to the ExA's first written questions
- [REP2-015] Applicant's outstanding responses to the ExA's drafting queries on the draft DCO and action points from deadline 1
- [REP2-056] Welsh Government - response to the ExA's first written questions
- [REP3-017] Applicant's draft DCO comparison - revision 3A to revision 4
- [REP3-015] Table of DCO amendments – revision 3A to revision 4
- [REP3-019] Explanatory Memorandum revision 1
- [REP3-026] Applicant's responses to Written Representations
- [REP3-032] Natural Resources Wales submission for deadline III

Document references [in square brackets] are from the Examination Library, which can be found on our website (click [here](#)).

A schedule of abbreviations is provided at the end of this document.

Item	Draft DCO rev 4 reference [rev 0 reference, if different]	Document reference	Query
Part 1 - Preliminary			
1.	Preamble		The reference to s132(3) PA2008 has been removed, said to be consequent on the removal of plots from CA. Plot 65 remains subject to CA. The SoR Table 2 says that Plot 65 is subject to <i>"Acquisition of rights to create and use an access track and to create and make available for public use a permanent diversion"</i> . The BoR however refers to the acquisition of ownership interests in Plot 65. Which is correct? If the former, s132 continues to apply?
2.	Article 2(1) (Interpretation) <i>"authorised development" means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, ...</i>	[REP1-003] Question 11 [REP3-026] Page 22-14	Further to comments from both the ExA and the Welsh Government please could the applicant further consider how the authorised development can be fully and specifically described in Part 1 of Schedule 1 in order to avoid ambiguity about the scope of the authorised development?
3.	Article 2(1) (Interpretation) <i>"except for investigations for the purpose of assessing ground conditions, the diversion and laying of services"</i>	[REP1-003] Question 12	The applicant's response suggested that the diversion and laying of services before commencement would relate to the diversion of any services under the public road and cycle path. Could a more specific description be provided in the draft DCO to clarify that site wide service diversions are not anticipated before construction commences?
4.	Article 2(1) (Interpretation) <i>"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace; reconstruction and replacement includes works which can be carried out from within the</i>	[REP1-003] Question 15	i) Please clarify the meaning of <i>'within the development'</i> ? ii) Please could the applicant consider how the definition can be further tightened to clarify that maintenance activities do not include major construction works? iii) For clarity, please could the applicant prepare a detailed schedule of examples of activities that are and are not considered maintenance?

Item	Draft DCO rev 4 reference [rev 0 reference, if different]	Document reference	Query
	<i>development including but not limited to relining on inner facings and replacement of components but will not include construction works on land outwith the authorised development"</i>		
Part 2 – Principal powers			
5.	Article 6 (Power to deviate)	[REP1-026]	With reference to NRW's proposal for Article 6(3), the following alternative is suggested: <i>"(3) Deviation under paragraph (1) is permitted only to the extent that it complies with plans approved by the relevant planning authority under requirement 6(1)"</i>
6.	Article 9 (Defence to proceeding in respect of statutory nuisance)	[REP2-015] Question 14	i) Following the applicant's further response to the first written questions, please could it explain why the best practicable means defence under section 82 of the Environmental Protection Act 1990 is not sufficient defence to civil actions? ii) Does the applicant seek more defence that a statutory authority and, if so, how is this justified? iii) Does GC have any further comments on Article 9?
7.	Article 13 (Temporary prohibition and restriction of streets) <i>13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily prohibit, restrict, alter or divert any street and may for any reasonable time-....</i>	[REP1-021] Page 10 [REP2-005] Ref 3.1	i) This article was altered at deadline 2 at the request of the Council. The original referred to stopping up of streets, now replaced by ' <i>prohibit or restrict</i> '. Stopping up is a recognised term – indeed it is used in the Highways Act 1980 - and is used in other articles (e.g. Article 11). The ExA's preference, subject to any discussion at the DCO hearing, is to retain the reference to stopping up. ii) If variations on ' <i>prohibit or restrict</i> ' are to be used in place of stopping up, can they be used consistently throughout the document?

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			iii) Can the sense be corrected – as drafted, for example, Article 13(1) would read that the undertaker may <i>'temporarily prohibit...any street'</i> ?
8.	Article 13(8) (Temporary prohibition and restriction of streets) <i>(8) The undertaker is not obliged to obtain any order under Section 14 of the 1984 Act for the temporary stopping up or diversion of any street which is authorised under this Order.</i>	[REP1-003] Question 26	Orders under s14 of the 1984 Act are prescribed consents in Wales, provisions for whose removal can only be included in a DCO with the consent of the <i>'relevant body'</i> ; the applicant has said that this will be dealt with in a SoCG with GC. That SoCG has yet to be submitted; does GC consent?
Part 3 – Powers of acquisition			
9.	Article 19(3) and (4) (Compulsory acquisition of land)	[REP3-015] Ref 3.2	The amendments to these paragraphs seek to reflect that CA is no longer required for former Plot 42(the exchange land). However, the amendments are no longer specific as to the identity of the exchange land, merely that it has to be of the same area. Should this be more specific, as all parties will have proceeded on the basis that the examination is assessing the suitability of former Plot 42 as replacement land?
10.	Article 21 (deleted) (Omission of the mineral code)	[REP1-003] Question 21 [REP3-015] Ref 3.4 [REP1-021]	i) In its response to initial drafting query 21, regarding vertical limits of deviation, the applicant responded <i>'The development as proposed in the indicative engineering drawings and sections is already at a depth which impinges on minerals and underground rights. This has been explicitly recognised by the incorporation of the mineral code at Article 21'</i> . The Table of DCO amendments says that Article 21 has been omitted <i>'Consequential to the removal of plots from the scope of compulsory acquisition this article is no longer necessary'</i> . Can the applicant elaborate on why the Mineral

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			Code is no longer necessary? ii) Please could the applicant respond to GCs comments?
11.	Article 22(4) [23(4)] Private rights	[REP1-003] Question 21	i) What duration could temporary possession be required for? ii) Can a limit be secured? iii) What consideration has been given to the rights affected and justification of compelling need in the public interest?
12.	Article 25 [26] (Guarantees in respect of payment of compensation etc.) <i>(a) subject to paragraph (3), security of £19019,000 has been provided in respect of the liabilities of the undertaker to pay compensation under this Order</i>	[REP3-015] Ref 3.6	The Table of DCO amendments says that this is ' <i>reflect the reduced liability following removal of plots</i> '. Can the applicant provide a more detailed justification for the reduction in the level of security?
Part 4 – Miscellaneous and general (Requirements)			
13.	Article 29 [30] (Operational land for purposes of the 1990 Act)	[REP1-026]	Please could the applicant respond to the NRW's suggestion regarding additional wording: <i>'save that this Order shall not be treated (or have such effect) for the purpose of section 9(4)(d) Forestry Act 1967 (cases in which no licence is required) nor so treated (or have such effect) '.</i>
14.	Article 30 [31] (Felling or lopping of trees and removal of hedgerows)	[REP1-003] Question 43(d)	i) Consent under the 1997 Regulations is a prescribed consent in Wales under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. In its initial response to drafting queries the applicant indicated this would be covered in a SoCG. SoCG do not appear to cover this point, however. What is the present position? ii) Article 30 is of general application but should not apply to

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			trees subject to TPOs which should be dealt with under Article 31. Can this be made clear in the next draft DCO?
15.	Article 31 [32] (Trees subject to tree preservation orders)	[REP2-056]	Please could the applicant respond to the Welsh Government's comment regarding the prevention of clearance and removal during the bird nesting season?
16.	Article 31 [32] (Trees subject to tree preservation orders)	[REP1-003] Question 44(b)	Consent under s198 TCPA 1990 is a prescribed consent in Wales under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. In its initial response to drafting queries the applicant indicated this would be covered in a SoCG. SoCG do not appear to cover this point, however. What is the present position?
17.	Article 33 [32] (Apparatus and rights of statutory undertakers in stopped-up streets) <i>(1) The undertaker may for the purposes of article 10 (street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets</i>	[REP1-003] Question 45	The applicant indicated that Article 33(1) need not be subject to the protective provisions because ' <i>There is a statutory regime in place for the protection of apparatus under streets. The additional protections given under this Order are necessary outside of streets where those provisions will not apply</i> '. Article 33(1) as drafted could be taken to exclude the statutory regime. Should this be clarified by making the paragraph subject to the operation of the relevant statutory regime?
18.	Article 38 [39] (Certification of plans etc)	[REP1-003] Question 50	Initial drafting query 50 listed a number of documents that should be listed in this article. These included the design and access statement, TPO and hedgerow plans, and the draft CoCP in Appendix 16.1 of the ES, which have not been included. Is there a reason for this?
19.	Article 39 [40] (Crown rights)	[REP1-003] Question 51 [REP3-011] Page 6	In its response to initial drafting query 51, the applicant indicated that the consent of the Crown Estate to the inclusion of this Article would be covered in a SoCG. That was still outstanding at deadline 3 - see applicant's note of status of SoCGs). What is the present position?

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Schedule 1 Part 1 (Authorised development)			
20.	<p><i>(d) temporary construction site offices;</i></p> <p><i>(e) haul roads and hard standing on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;</i></p> <p><i>(f) extraction of materials by tunnelling, boring, blasting or digging, including any minerals present, necessary to undertake the Works;</i></p> <p><i>(g) use of any materials extracted by the undertaking of the Works to form dam structures and slate mounds;</i></p> <p><i>(h) reuse of slate and organic materials arising from reprofiling or landscape works to create temporary haul roads, access tracks and compounds;</i></p> <p><i>(i) construction of temporary lay down storage areas and compounds and their restoration;</i></p>		Please could the applicant consider whether the identification of the locations of activities for which there are potential impacts can be improved by allocating 'further development' items (d)-(i) to specific Work Nos?
21.			Could the temporary settlement lagoons, Water Treatment Facility and locations for the discharging of Unexploded Ordnance be included in relevant Work Nos?
Schedule 1 Part 2 (Requirements)			
22.	Requirement 5(1) (Detailed design)		With reference to the Reservoir Act 1975, is there a possibility that the parameters specified in Schedule 1 and

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			Requirement 5 could be exceeded for design safety reasons or has the applicant already accounted for this?
23.	Requirement 5(1) (Detailed design)		Please specify a maximum height for the Q1 slate mounds and confirm whether this is consistent with the visual impact assessment and as represented on the photomontages?
24.	Requirement 5(1) (Detailed design)	[REP1-003] Question 21(c)	i) The height of ' <i>other</i> ' ancillary buildings has been limited to 5m. Can their maximum length and width also be limited to help ensure that they remain ancillary in form and impact of the main building? Should ' <i>other</i> ' be removed from the description? ii) Ancillary buildings are also included in descriptions of elements with maximum heights of 10m and 12m. Should ancillary buildings be removed from those descriptions?
25.	Requirement 5(1) (Detailed design)		Should parameters be included for the Water Treatment Facility?
26.	Requirement 5(2) (Detailed design) <i>(2) approval must not be given except in relation to minor or non-material amendments which have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to <u>any materially new or materially different environmental effects</u> from those assessed in the environmental statement</i>		i) Is the use of ' <i>being unlikely to give rise to</i> ' robust enough, or should it be ' <i>do not give rise to</i> ', as is used in the final paragraph of Schedule 1 Part 1? ii) Similarly for Article 6(2).
27.	Requirement 5(2) (Detailed design) <i>(2) approval must not be given except in relation to minor or non-material</i>		i) This suggests that approval should not be given if the environmental effects are different and more beneficial. Should this be worded as ' <i>materially new or more adverse environmental effects</i> '?

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	<i>amendments which have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any <u>materially new or materially different environmental effects</u> from those assessed in the environmental statement</i>		<ul style="list-style-type: none"> ii) Similarly for Article 6(2)? iii) Similarly for Schedule 1 Part 2? iv) Similarly for Requirement 25(2), which should also refer to '<i>materially new</i>' effects?
28.	Requirement 6(2) (Code of construction practice) <i>(2) must be substantially in accordance with the principles and restrictions set out in Appendix 16.1 of Volume 3 of the Environmental Statement</i>		<ul style="list-style-type: none"> i) Should reference be made to the final version of the draft CoCP submitted during the examination? ii) Should the final version submitted during the examination be a certified document? iii) Could the applicant suggest a mechanism by which it can be ensured that the certified draft CoCP establishes the minimum measures to be adopted in all later version of the CoCP and that there is no mechanism by which these can be relaxed? iv) Following updates to the draft DCO some of the Requirements referenced in the draft CoCP [REP2-013] are no longer correct. Please could the draft CoCP be updated? Similarly for [REP3-006], [REP3-024], etc.
29.	Requirement 8 (new) (Water management plan)		<ul style="list-style-type: none"> i) Are NRW and GC content with the wording of this new Requirement? ii) '<u>(10) Where the undertaker considers that an amendment is required.....</u>'. Is NRW content with this drafting?
30.	Requirement 9 (new) (Silt management plan) <i>(2)The plan must be consistent with the mitigation requirements set out by Chapter 9 of the Environmental</i>		Are the underlined words misplaced, as they relate to the water management plan, not the silt management plan?

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	<u>Statement.(2) The water management plan is to include details of the surface and foul water drainage system, including means of pollution control.</u>		
31.	Requirements 8-9, 11-17 [9-15] (Water management plan) (Silt management plan) (Construction traffic management plan) (Dust management plan) (Noise management plan) (Habitat management plan) (Land discovery strategy) (Air quality baseline monitoring plan) (Archaeological compensation and enhancement strategy)		<p>i) Does the following need to be clarified for each plan and strategy covered by these requirements:</p> <ul style="list-style-type: none"> • The plan / strategy must be submitted to and approved in writing by the relevant planning authority? • All construction works for the authorised development must be carried out in accordance with the approved plan / strategy? <p>ii) Should the final versions of each draft or outline plan or strategy submitted during the examination be a certified document in Article 38?</p> <p>iii) Could the applicant suggest a mechanism by which it can be ensured that the certified version of each draft plan or strategy establishes the minimum measures to be adopted in all later version and that there is no mechanism by which these can be relaxed?</p> <p>iv) Similarly for any other measures set out in the Schedule of Other Required Plans and Strategies [REP3-024].</p> <p>v) How should the Common, Access and PRow Strategy [REP3-005], draft Excess Water Management Strategy [REP3-013] and the draft Biosecurity Plan [REP3-021] be handled in the draft DCO – they are not currently referenced?</p>
32.	Requirement 17 (Archaeological compensation and enhancement strategy)		Should reference be made to the need for the final Archaeological Compensation and Enhancement Strategy to accord with a (site wide) Written Scheme of Investigation?
33.	Requirement 18 [16]	[REP1-003]	Further to comments from both the ExA and GC, please

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	(Construction hours)	Question 21(c) [REP3-026] Page 26-63	could the applicant further consider whether it is possible to clarify the circumstances under which an extension of hours can be permitted - e.g. for emergency works or for works over running normal working hours due to unforeseen circumstances or similar?
34.	Requirement 18 [16] (Construction hours) <i>18.—(1) Construction work for the authorised development must not take place on public holidays or outside the hours of— 07:00 to 19:00 on Monday to Friday, and 07:00 to 13:00 on Saturdays, <u>except with the prior written approval of the relevant planning authority.</u></i>		Should the scope of planning authority approval be limited, i.e. <i>“except with the prior written approval of the relevant planning authority under paragraph (2)”</i> ?
Schedule 3 Streets for which a substitute is to be provided			
35.	Public Right of Way 9 Waunfawr Informal footpath	[REP1-021]	i) Please could the applicant respond to GC's comments? ii) Is GC now satisfied that roads/paths are adequately referenced in the DCO?
Schedule 4 Streets to be temporarily stopped up			
36.	Public Right of Way 3 Waunfawr	[REP1-021]	i) Please could the applicant respond to GC's comments? ii) Is GC now satisfied that roads/paths are adequately referenced in the DCO?
Schedule 8 [9] Discharge of requirements			
37.			Various amendments have been made to this Schedule, including the time periods referred to. The amendments

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			also seek to impose timescales for responses by consultees, which may be difficult to enforce. The amendments are not explained in the Table of DCO amendments. Can the applicant please do so at the DCO hearing?
38.	<i>4—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (a)(or any regulations replacing the same) is to be paid by the undertaker to the relevant planning authority in accordance with these regulations</i>		As no fee is specified in the Regulations in respect of an application to discharge a requirement of a DCO, should this read e.g. <i>'...in respect of a requirement, a fee is to be paid by the undertaker to the relevant planning authority equal to that which would be payable under the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (a)(or any regulations replacing the same) in respect of an application for the discharge of a condition. ?</i>
39.		[REP3-052] Page 22-23	Please could the applicant advise if amendments are proposed to address the Welsh Government's concerns regarding consistency with the new Development Management procedures?

Abbreviations

BoR	Book of Reference	NRW	Natural Resources Wales
CA	Compulsory Acquisition	PA2008	The Planning Act 2008
CoCP	Code of Construction Practice	PRoW	Public Right of Way
DCO	Development Consent Order	SoCG	Statement of Common Ground
ES	Environmental Statement	SoR	Statement of Reasons
ExA	Examining Authority	TCPA 1990	Town and Country Planning Act 1990
GC	Gwynedd Council	TPO	Tree Preservation Order