

## Glyn Rhonwy Pumped Storage Development Consent Order

### Explanatory Memorandum

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## 1 INTRODUCTION

- 1.1 This Memorandum accompanies an application for development consent by Snowdonia Pumped Hydro Limited ("the Undertaker") and explains the purpose and effect of each article and Schedule in the Glyn Rhonwy Pumped Storage Order 201[X] ("the Order") **(Document Reference 3.01)**, as required by Rule 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009' ("the Applications Regulations").
- 1.2 The Order would confer powers on the Undertaker to construct and operate a pumped storage generating station to be constructed near Llanberis in the County of Gwynedd ("the authorised development"). Pumped storage is an efficient electricity storage technology that works at the scale of the National Grid. It is flexible and responsive technology which supports and complements the use of renewable energy through the grid. The Development will play a valuable in balancing supply and demand as the percentage of renewables supplying power to the UK's electricity grid continues to increase.
- 1.3 The Order also confers upon the Undertaker powers of compulsory acquisition of land which are limited to the acquisition of land and rights over land required for the authorised development or to facilitate it, or that is incidental to the authorised development within the meaning of section 122 of the Planning Act 2008 ("the 2008 Act"). A justification for these powers is set out in the Statement of Reasons **(Document Reference 4.01)** which accompanies the application.
- 1.4 The Undertaker proposes to compulsorily acquire one area of land which forms open space ~~and an area of undesignated land to provide replacement land for that open space~~. Section 131 of the Act is accordingly engaged. This provides that Special Parliamentary Procedure is required unless certain exceptions

(specified in subsections (4) and (5)) apply. By virtue of subsection (4) an exception to Special Parliamentary Procedure is made out if the Secretary of State is satisfied that replacement land subject to the same rights, trusts and incidents has been or will be given. An agreement to acquire the area of replacement land has been concluded with the landowner. ~~included in the compulsory acquisition powers sought to provide certainty that it will be vested in the seller of the open space.~~ The Undertaker therefore considers that the exception applies and has included a statement in the order which confirms that the requirements of Section 131(4) of the Act have been met.

~~1.5 The Undertaker further proposes to acquire rights over an area of open space to permit the installation of underground pipework. Section 132 of the 2008 Act therefore applies to this area. Section 132 provides that Special Parliamentary Procedure is required unless one of the exceptions specified in subsections (3) to (5) applies.~~

~~1.6 By virtue of subsection (3) of Section 132 an exception to the requirement for Special Parliamentary Procedure is made out if the Secretary of State is satisfied that the land in question, when burdened by the news right, will be no less advantageous to the persons in whom it is vested; other persons entitled to rights over it; and to the public at large than it was prior to their imposition and that fact is recorded in the relevant Order.~~

~~1.7 Although there will be temporary, localised interference with the surface of the land during round investigation and blasting works access will be maintained. In the medium and long term construction and operation of the underground pipework will have no impact on the use of the surface of the land. The surface of the land will remain unobstructed and available for the purposes for which it is currently used.~~

~~4.81.5~~ ~~In view of the above the Undertaker considers that the open space, when burdened with the new rights, will be no less advantageous to the owner nor the general public than before their imposition. The Undertaker has therefore included in the Order a statement which confirms that Section 132(2) has been satisfied.~~

4.91.6 The Order seeks to apply and modify statutory provisions in relation to the determination of procedures in relation to approvals or appeals in relation to requirements provided for in Part 2 of Schedule 1 to the Order and in relation to compulsory acquisition of land. For this reason, under sections 117(4) and 120(5) of the 2008 Act, the Order must be made by statutory instrument and is drafted in that form.

~~4.101.7~~ Although no longer prescribed under the 2008 Act, the Undertaker has sought to largely base the Order on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009 No. 2265) ("the 2009 Order") ("the model provisions"), and references in this Memorandum to model provisions are references to the model provisions set out in Schedule 1 to the 2009 Order unless the context otherwise requires. In some respects the Order diverges from the model provisions. Where there is a divergence from the model provisions, an explanation is provided.

~~4.111.8~~ A full technical explanation of the authorised development is contained in the Environmental Statement ("ES") accompanying the application (**Document references 6.01 to 6.04**). A detailed Planning Statement also accompanies the application (**Document reference 10.01**). The Statement sets out the planning context applicable to the proposed application and assesses the scheme in the light of the current policy context.

## 2 THE PURPOSE OF THE ORDER

2.1 The proposed generating station would have a maximum export capacity of 99.9 megawatts. The proposed scheme will therefore construct a generating station with capacity to generate more than 50 megawatts in Wales and constitutes a Nationally Significant Infrastructure Project for the purposes of sections 14(1)(a) and 15(2) of the 2008 Act. Development consent is therefore required to be obtained in accordance with the provisions of that Act. Accordingly, the Undertaker is making an application to the Secretary of State for Energy and Climate Change ("the Secretary of State") through the Planning Inspectorate for the Order seeking to authorise the construction and maintenance of the proposed generating station.

## 3 THE PROVISIONS OF THE ORDER

### *Part 1 — Preliminary*

**Article 1** (*Citation and commencement*) which does not appear in the model provisions provides for the commencement and citation of the Order.

**Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. This includes definitions included in the model provisions with additions (e.g. "access plan" and "maintain" ) which do not appear in the model provisions, but which relate to the project and are self explanatory. In addition a number of terms have been added (eg "commence") which add to the certainty of the proposed requirements. In common with many development consent orders, a definition of the Environmental Statement has been inserted.

## *Part 2 - Principal powers*

**Article 3** (*Development consent etc. granted by the Order*) confers development consent for the authorised development within the Order limits (shown on the works plan) thereby authorising the construction of the authorised development. The "authorised development" is defined in article 2 (Interpretation) of the Order as the development which is described in Part 1 of Schedule 1 to the Order and any other development that is authorised under the Order. Such consent is subject to the requirements attached to the Order and set out in Part 2 of Schedule 1 to the Order. The requirements correspond to conditions which would usually be attached to a consent under section 36 of the Electricity Act 1989 and an associated direction as to planning permission under section 90(2) of the Town and County Planning Act 1990. Article 3 adopts model provision 2 but in addition to the model provision, and subject to article 6 (Power to deviate), a new paragraph (2) has been inserted which links the authorised development to the works plan by spelling out that the works numbered in the Schedule are to be constructed in the lines and situations shown on the works plans. This is a standard approach used in TWA Orders (see article 4(2) of the Luton Dunstable Translink Order 2006) but more recently in Development Consent Orders which have been made by the Secretary of State.

**Article 4** (*Procedure in relation to approvals etc under requirements*) deals with the process which should be followed when further approvals are required under the requirements set out in Part [3](#) [2](#) of Schedule 1 to the Order. The article ensures that all powers are available in connection with applications and

appeals that may be made under specific requirements in the Order. It also ensures that appeals will be determined by the appropriate Secretary of State in accordance with the law as it currently applies to statutory undertakers who benefit from a licence under section 6 of the Electricity Act 1989. Subsection (2) applies the provisions of Schedule 89 to the discharge of requirements. This sets out the process and fees which will apply to applications to discharge requirements. Article 4 is not preceded in the model provisions.

**Article 5** (*Maintenance of authorised project*) authorises the Undertaker to maintain the authorised development unless the Order or an agreement made under the Order provides otherwise. This provision follows model provision 3. The definition of "maintenance" mirrors definitions used in other contexts and the confirmed Rookery South Resource Recovery Facility Order. Article 5 does deviate from model provision 3 in that the wording "and from time to time" has been inserted into the article. This wording is preceded in Article 5 of the Brechfa Forest West Wind Farm Order 2013. The broader definition is intended to ensure that there is express enduring authority for all authorised activities that may be undertaken.

**Article 6** (*Power to deviate*) provides for limits within which the Undertaker can deviate in the construction and maintenance of the authorised development. There is no corresponding model provision within Schedule 1 to the 2009 Order. However, a model provision dealing with limits of deviation has been included as model provision 6 in Schedule 2 to the 2009 Order dealing with railways. The limits of deviation allow for the detailed design and construction of the works to specify any item at any location within the area identified for that work within the

works plans. They also allow vertical deviation from the indicative engineering drawings and sections for the underground structures subject to the maximum parameters set out in the requirements.

**Article 7** (*Operation of generating station subject to requirement to obtain licence*) authorises the Undertaker to operate the generating station comprised in the authorised development pursuant to section 140 of the 2008 Act which provides that an order granting development consent may include provision authorising the operation of a generating station if the development to which the order relates includes the construction of the generating station. Article 7(1) is not a model provision but is required in order to satisfy section 140 of the Planning Act 2008. In addition, article 7(2) has been inserted to make it clear that it is not intended to invoke section 150 in relation to the need for the Undertaker to obtain a generating licence or an exemption for such a licence.

**Article 8** (*Benefit of order*) section 156 of the 2008 Act provides for a development consent order to have effect for the benefit of the land generally and anyone for the time being interested in the land, except to the extent that the Order provides otherwise (that is the same position that applies in respect of a planning permission). This contrasts with the usual position in relation to statutory powers, which is that the benefit of statutory powers extends only to the body on whom they are conferred. Revised article 8(1) provides for the usual statutory position to apply. Article 8(1) provides, subject to articles 8(2) and 8(5), for all the articles of the Order conferring power on the Undertaker to apply solely for the benefit of the Undertaker. Article 8(2) enables the Undertaker, with the consent of the Secretary of State to transfer some or all of its powers under the Order or to



allow some or all of its powers to be exercised by another party for a specified period, by way of lease. Article 8(5) provides that the undertaker may transfer the benefit of the Order or any part thereof without Secretary of State consent only where the transferee is a body licensed under section 6 of the Electricity Act 1989. The meaning of this provision is that any such body will already have been approved by the Secretary of State as a relevant statutory undertaker. Articles 8(6), (7) and (8) require the undertaker to notify the Secretary of State and local planning authority of any transfer of the benefit of the Order. This provision follows the wording preceded in other orders including The Hornsea One Offshore Wind Farm Order 2014. The provisions of Article 8(2), (3) and (4) follow model provision 5.

Model provision 6 (*Application and modification of legislative provisions*) is not required as the only amendments to legislation which have been sought relate to the modification of compensation and compulsory purchase enactments for creation of new rights in accordance with article 7 which is explained below.

**Article 9** (*Defence to proceedings in respect of statutory nuisance*) provides the Undertaker with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990<sup>12</sup> if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 or which nuisance is a consequence of the authorised development which cannot reasonably be avoided. Model provision 7 has been modified as to the extent to which the Undertaker can rely upon model provision 7(1) to include proceedings against it under sections 79(1) (c), (d) (e), and (ga)

of the Environmental Protection Act 1990 in respect of air quality and noise from streets which have been identified as a risk during construction as well as noise arising from the use of the authorised project.

**Article 10** (*Street works*) authorises the Undertaker to interfere with, and execute works in or under streets specified in Schedule 2 to the Order and carry out work in connection with the placing, maintaining or moving of apparatus for the purposes of the authorised development. Paragraph (2) of model provision 8 has not been included because it is considered that this paragraph is not relevant to the proposed scope of works.

**Article 11** (*Stopping up of streets*) authorises the Undertaker to permanently stop up the streets specified in column (2) of the table in Schedule 3 to the extent specified in column (3) of that table and shown on the Access Plan (Document Reference 2.09.4). The stopped up street or any section of it stopped up under article 11(1) will be replaced by the substitution of the street specified in column (4) of the table in Schedule 3.

Where the street or section of it is stopped up under article 11(1), article 11(3) provides for the payment of compensation to any person who suffers loss as a result. Article 11(4) provides that the operation of article 11 is subject to article 334 (apparatus etc. of statutory undertakers). This article follows the provisions of Article 9(1) and (2) of the model provisions. Article 9(3) of the model provisions has been omitted as there are no streets to be stopped up for which no substitute will be provided.

**Article 12** (*Application of the 1991 Act*) provides for the application of the New Roads and Street Works Act 1991 ("the 1991 Act") in relation to works carried out under the Order in relation to a

highway. There is no corresponding model provision within Schedule 1 to the 2009 Order, however a model provision dealing with the application of the 1991 Act has been included as model provision 12 in Schedule 2 to the 2009 Order dealing with railways. Article 12 adopts model provision 12 but in addition to the model provision new paragraphs (2), (3) and (4) have been added to provide that relevant provisions of the 1991 Act shall apply to a temporary stopping up or alteration of a street under article 3, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require the Undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus. This provision is commonly included in TWA Orders, including article 4 of the Network Rail (Nuneaton North Chord) Order 2010.

**Article 13** (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. If the Undertaker wishes temporarily to stop up streets specified in Schedule 4, it will need to consult the relevant street authority. A diverted route for use by the public must be provided for any street which is temporarily stopped up in accordance with article 14(5). This subsection, together with subsection 13(7) and 13(8) are additional to model provision 11.

Articles 13(7) and (8) have been inserted to take account of consideration of matters arising under section 150 of the 2008 Act. Under section 120(5)(a) of the 2008 Act a development consent order may "apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order". Section 150 confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to

override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Interested parties and Miscellaneous Prescribed Provisions) Regulations 2015 identify a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. These include consents under the Road Traffic Regulation Act 1984. Article 13(8) provides that a temporary road traffic regulation order is not required where the power granted under this Order is exercised. Article 13(7) has been inserted into the Order to introduce a time limit of 28 days after which a highway authority which fails to respond to an application for consent is deemed to have given its consent.

The reference points for the commencement and termination of the temporary diversions are described in Schedule 4 and shown on the Access Plan (**Document Reference 2.09.4**).

**Article 14** (*Access to works*) paragraph 14(1)(a) authorises the Undertaker to provide or improve access at the locations specified in columns 1 and 2 of Schedule 5. If the Undertaker wishes to provide or improve access at the locations which are not specified in Schedule 5, paragraph (1)(b) provides that the Undertaker requires the approval of the relevant planning authority. A departure from model provision 12 has been made which provides for consent not to be unreasonably withheld together with (in paragraph 2) a time limit of 28 days after which a planning authority which fails to respond to an application for consent is deemed to have given its consent.

In addition model clause 12 has been adapted by the inclusion of paragraph (1)(c) which authorises the Undertaker to

strengthen, improve, repair or reconstruct any street under the powers conferred by the Order. This amendment is required to complement the power to be conferred under article 10 (street works) to lay cables in part of the streets specified in Schedule 2 to the Order.

**Article 15** (*Construction and maintenance of new or altered streets*) makes provision for new streets and street alterations or diversions to be completed to the reasonable satisfaction of the highway authority (or street authority in the case of alterations and diversions) and for their maintenance by the Undertaker for a period of 12 months, and by the relevant authority after that 12 month period. There is no corresponding model provision within Schedule 1 to the 2009 Order. However a model provision dealing with the application of the 1991 Act has been included as model provision 10 in Schedule 2 to the 2009 Order dealing with railways. Article 15 adopts this model provision 10 though paragraph 10(3) has not been included as it is not relevant to the authorised project.

**Article 16** (*Agreements with street authorities*) authorises the Undertaker to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets. Article 16 adopts model provision 13 though paragraph (1)(b) has been varied, following the precedent in article 13 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 by providing for agreements to be entered into with street authorities in relation to the strengthening, improvement, repair and reconstruction of a street, which is considered appropriate and necessary for the construction of the authorised project.

**Article 17** (*Discharge of water*) enables the Undertaker to discharge water

into any watercourse, public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and (if provided) superintendence of the person to whom it belongs (such approval may be subject to reasonable terms and conditions but shall not be unreasonably withheld). In a departure from the model provisions, model provision 14 has been altered by the addition of paragraph 17(8) so that a person who fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. This has precedent in the same context in confirmed Orders, including article 12 of the Brechfa Forest West Wind Farm Order. In paragraph (7) the wording of the model provision has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010.

**Article 18** (*Authority to survey and investigate the land*) authorises the Undertaker to survey and investigate any land within the Order limits to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It includes provision for the payment of compensation. Approval for the making of trial holes (which may not be unreasonably withheld) is, in the case of land located within the highway boundary, to be obtained from the highway authority, or in the case of a private street, from the street authority.

In a departure from paragraph (1) of model provision 16 the words "or which may be affected by the authorised development" have been omitted from article 18. It is considered that as article 18 confers on the Undertaker power a form of compulsory acquisition these words are inconsistent with the requirement for compulsory acquisition powers to be conferred in relation to identifiable areas of land. In addition

model clause 16 has been modified, so that a highway authority or street authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. This has precedent in the same context in recent confirmed DCOs.

### *Part 3 - Powers of acquisition*

**Article 19** (*Compulsory acquisition of land*) confers on the Undertaker powers of compulsory acquisition, subject to article [212](#) (*Compulsory acquisition of rights*) and [4039](#) (*Crown rights*), of so much of the Order land as is specified in the Book of Reference and is required for the authorised project or to facilitate it, or which is incidental to it. Paragraphs (2) and (3) of model provision 18 have not been followed. Paragraph (2) would have provided for the automatic extinguishment of any rights applying to the Order land as soon as it is vested in the Undertaker. This is inconsistent with the provisions of article [232](#) (private rights) which is based on model provision 22 (private rights of way). Article [223](#) provides for the extinguishment of rights on the Undertaker's entry onto land concerned, which may take place ahead of the vesting of the land. Article [223](#) also provides for rights to be excluded from extinguishment where that is not required. It has therefore been considered preferable to extend article [223](#) to deal with rights in general and omit this from article 20. Paragraph (3) of model provision 18, which would have provided for compensation where a person suffers loss by the extinguishment or suspension of any private right of way, is replaced by a similar provision in article [223\(3\)](#).

Whereas the DCO seeks consent for the compulsory purchase of open space and replacement exchange land for that open space, paragraph 19(3) provides that should the open space be compulsorily acquired through the powers granted then the exchange land will be acquired and vested in the seller of the open space not in the Undertaker. This provision accordingly gives the Secretary of State reassurance that the exchange land will be provided and vested in the seller as required by the Act.

**Article 20** (*Time limit for exercise of authority to acquire land compulsorily*) this article imposes a time limit of 5 years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land. This article reflects model provision 20(1). Paragraph (2) of the model provision has not been included as no power of temporary acquisition is sought, rather where occupation is required this is sought through the acquisition of rights under article 212.

~~**Article 21** (*Incorporation of the mineral code*) incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 which excludes from the compulsory purchase any minerals under the land which is the subject to the acquisition of, or interference with rights over land under the order, and sets out the procedure whereby the owner of such minerals might serve notice on the acquiring body, and the rights and obligations of the acquiring body following the service of such notice. The article has been adopted to apply to the possible extinguishment of mineral rights under article 23 (Private rights).~~

**Article 212** (*Compulsory acquisition of rights*) enables the Undertaker to



acquire rights either by creating new rights or acquiring new rights. Paragraph (1) provides for such rights to be acquired over land which the Undertaker is authorised to acquire under article 19.

Unlike model provision 21, which would require all rights which the Undertaker intends to acquire to be included in the book of reference and shown on the land plan, article 22 provides for the Undertaker to acquire such new rights in the Order land as may be required for any purpose for which that land may be acquired outright under article 20. This flexibility is important. Without such a power to acquire new rights this would not be possible and the land in question would have to be acquired compulsorily. A provision of this kind is usual in TWA Order and hybrid Bills. For example, such powers are provided by article 19 the Network Rail (Nuneaton North Chord) Order 2010 and Part 3 of Schedule 6 to the Crossrail Act 2008.

~~Paragraph (2) departs from model provision 21 in providing that, in the case of the Order land specified in Schedule 6 (land in which only new and existing rights etc. may be acquired), the Undertaker's compulsory acquisition powers are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of Schedule 6. In relation to such land the possibility of outright acquisition is not required. Similar provision was included in article 19 of the Network Rail (Nuneaton North Chord) Order 2010.~~

Paragraph (23) provides that where the Undertaker only acquires rights over land, it shall not be obliged to acquire any greater interest in that land.

It is considered that the compulsory purchase and

compensation provisions under general legislation require modification in order to apply to the acquisition of new rights as explained in paragraph 3.32 above and might be acquired in the limited circumstances highlighted in article 212. The language of these provisions is prescribed in terms of the acquisition of an existing interest in land and they do not operate clearly in relation to the creation of a new right. Accordingly a new Schedule 67 (modification of compensation and compulsory purchase enactments for creation of new rights), which is modelled on the usual TWA Order equivalent and the provisions of the Local Government (Miscellaneous) Provisions Act 1976 which apply in relation to any compulsory purchase order made by local authorities is introduced in paragraph (4). For the purpose of section 126(2) of the 2008 Act, it is considered that the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights.

**Article 223** (*Private rights*) is amended, as explained in relation to article 19, so as to apply to private rights generally and not just to rights of way. In particular the rights identified in paragraphs 3.35 to 3.40 above.

Paragraph (2) of model provision 22 has been modified and paragraph (3) of model provision 22 has been omitted. It is considered that these model provisions are not required in light of paragraph (2) of article 223. In addition a reference to section 152 of the 2008 Act is inserted into paragraph (6) to make it clear that the compensation payable under this article is the compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965, but which, in relation to a Development Consent Order (to which section 10 does apply), arises instead under

section 152 of the 2008 Act.

**Article 234** (Acquisition of subsoil only) is based on model provision 24. This provision will allow the Undertaker to acquire the subsoil only where no ownership of the surface is required. As the authorised development includes a number of elements which will be below ground and will have no impact on the surface the ability to acquire the subsoil only is required to allow the Undertaker to acquire the minimum necessary landtake. This is particularly relevant to the land under the adopted highway where agreement to interfere with the surface has been reached with the highway authority and only the subsoil requires to be acquired compulsorily. Model provision 24 has been amended to extend the article to acquisition of rights as well as land as set out in article [2212](#).

**Article 245** (*Acquisition of part of certain properties*) this article would enable the Undertaker to acquire a part rather than the whole of any properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in the circumstances to require the whole to be taken, with disputes being determined by the Lands Chamber of the Upper Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965. Article [245](#) follows model provision 26.

**Article 256** (*Guarantees in respect of payment of compensation*) does not appear in model provisions, but is based on article 7 of the Swansea Bay Tidal Generating Station Order 2015, This article precludes exercise of the compulsory acquisition powers before appropriate security arrangements in respect of payment of compensation are in place, approved by the planning authority and requires that such security is retained for 20 years. It accordingly provides certainty for affected landowners that

compensation will be available for any exercise of compulsory acquisition powers.

**Article 267** (*Application of the Compulsory Purchase (Vesting Declaration) Act 1981*) provides for the application with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981, which contains alternative vesting procedures for land subject to compulsory purchase powers, to the acquisition of land under the Order. Article 267 follows model provision 23.

**Article 278** (*Power to override easements and other rights*) this power is not contained in the model provisions. While the model provisions state that land vested in the undertaker would be discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting it is not clear whether this covers the benefit of restrictive covenants and instances where land subject to third party rights is acquired by agreement.

The power on which reliance is placed to authorise extinguishment, etc. is s120(3) and (4) and paragraphs 2 (creation, suspension, extinguishment, etc. of interests in or rights over land) and 3 (the abrogation or modification of agreements relating to land) of Schedule 5 of the Planning Act 2008.

#### *Part 4 - Miscellaneous and general*

**Article 289** (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc., of the authorised project. Article 289 follows model provision 35.

**Article [2930](#)** (*Operational land for the purposes of the 1990 Act*) provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 ("cases in which land is to be treated as operational land for the purposes of that Act"), the development consent granted by the Order shall be treated as specific planning permission. The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 199526 will apply in relation to the generating station authorised by the Order. Article [3290](#) follows model provision 36.

**Article [301](#)** (*Felling or lopping of trees*) enables the Undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project. Provision is made for the payment of compensation to any person who suffers loss as a result of the exercise of the powers granted by the article. It also addresses the removal of hedgerows.

**Article [3231](#)** (*Trees subject to tree preservation orders*) enables the Undertaker to cut or lop protected trees. This is not included in the model provisions but has been included in other DCOs. The power has been limited to the areas and groups of trees specified in the relevant Tree Preservation Order which are within or in close proximity to the Order limits only.

**Article [332](#)** (*Statutory undertakers*) authorises the Undertaker to remove or reposition apparatus belong to statutory undertakers laid beneath streets. Article [3230](#) does not follow model provision 31. It has been amended to reflect the limited impact on apparatus contemplated under the Order.

**Article 334** (*Apparatus and rights of statutory undertakers in stopped-up streets*) provides that the Undertaker may, where a street is stopped up, require the statutory undertaker to relocate affected apparatus or provide other apparatus in substitution for the existing apparatus. The article provides that the Undertaker shall reimburse the statutory undertaker in such circumstances. Article 334 follows model provisions 32.

**Article 345** (*Recovery of costs of new connections*) provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 304. Article 354 follows model provision 32.

**Article 356** (*Protection of interests*) introduces Schedule 78 (Protection for electricity, gas, water and sewerage undertakers) which may contain specific safeguards for electricity, gas, water and sewerage undertakers.

**Article 367** (*Removal of human remains*) requires the Undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. Before removing any human remains, the Undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and a copy of the notice sent to Gwynedd Council. Any relative or personal representative of any deceased person whose remains are proposed to be removed may undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated, the Undertaker being responsible for the reasonable costs in doing so. In the event that such relative or personal representative does not remove the remains, the Undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal

and re-interment or cremation of the remains. Any dispute which may arise as to whether a person is the relative or personal representative of the person whose remains are proposed to be removed or as to the identity of the remains in question is to be determined in the county court. The Undertaker is required to certify to the Registrar General the date of re-interment or cremation and the place from which the remains were removed and the place where the remains were re-interred or cremated. A copy of the certificate is required to be sent to Gwynedd Council. The removal of any remains by the Undertaker is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article [367](#) follows model provision 17.

**Article [378](#)** (*Service of notices*) makes provision for the service of notices and other documents for the purposes of the Order. It is usual for this form of article to be found in TWA Orders. It is noted that section 229 of the 2008 Act contains a general provision for the service of notices which are required or authorised to be served, given or supplied under this Act. Section 229(6) provides that section 229 is subject to any contrary provision made by or under this Act and article [378](#) is put forward on that basis.

**Article [389](#)** (*Certification of plans etc.*) requires the Undertaker to submit the book of reference, the plans, and any other documents referred to in the Order to the decision maker for certification after the making of the Order. Article [389](#) follows model provision 41.

**Article [3940](#)** (*Crown Rights*) is taken from transport and works orders and is designed to protect the Crown's position in relation

to its own estate's rights, powers, privileges, authorities and exemptions and ensure that the Crown's written consent is required to any interference with its interests.

**Article 401** (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration. This article departs from model provision 42 in that a reference has been inserted to the precedent of the Institution of Civil Engineers to appoint an arbitrator to resolve any disputes between the parties.

## SCHEDULES

### *Schedule 1*

#### **4 SCHEDULE 1 - PART 1 (AUTHORISED DEVELOPMENT)**

4.1 Part 1 of Schedule 1 describes the authorised development comprising the numbered works.

#### **5 SCHEDULE 1 - PART 2 (REQUIREMENTS)**

5.1 Part 2 of the Schedule sets out certain requirements that the Undertaker must meet in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions. Their scope and content has been informed by the planning permission granted by Gwynedd Council for the 49.9MW pumped storage scheme.

#### **6 SCHEDULE 2 - STREETS SUBJECT TO STREET WORKS**

6.1 Describes the streets in which street works may be carried out.



## **7 SCHEDULE 3 - STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE TO BE PROVIDED**

7.1 Describes the streets which are to be stopped up and for which substitute streets will be provided. This Schedule includes an informal pathway which the Undertaker, having consulted Gwynedd Council, does not believe to be a PRoW and which is therefore included only as a precautionary measure.

## **8 SCHEDULE 4 - STREETS TO BE TEMPORARILY STOPPED UP**

8.1 Describes the streets to be temporarily stopped up and the extent of such temporary stopping up.

## **9 SCHEDULE 5 - ACCESS TO WORKS**

9.1 Describes the accesses to be formed and laid out for the works.

## ~~10 SCHEDULE 6 LAND IN WHICH ONLY NEW AND EXISTING RIGHTS ETC. MAY BE ACQUIRED~~

~~10.19.2 Identifies, by number on the Land plan (Document Reference 2.03), the land over which the Undertaker's powers of acquisition are limited to the acquisition of new rights described in that Part.~~

## ~~11~~**10 SCHEDULE 67 - MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

~~11.1~~**10.1** Provides for the usual compensation enactments for the compulsory purchase of land and interests in land to apply with necessary modifications to the compulsory acquisition under this Order of a new right.

## **4211 SCHEDULE 87 - PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS**

**42.111.1** Sets out the protective provisions for electricity, gas, water and sewerage undertakers. These are based on provisions commonly agreed with these statutory undertakers and included in TWA Orders, which provide effective mechanisms for the Undertaker and the statutory undertakers concerned can manage the interface between their respective operations. The nature of such protective provisions means that obligations are imposed on both the Undertaker (for example, by restraining the compulsory removal of apparatus) and on the statutory undertakers (who may, for example be required to obtain rights and facilities over third party land for the purpose of diverting apparatus).

## **4312 SCHEDULE 98 – DISCHARGE OF REQUIREMENTS**

**43.112.1** Sets out the process, timescales and applicable fees for applications made to the relevant planning authority to discharge the requirements and provides a route of appeal to the Secretary of State on any decision.