

Deadline 3 – Table of DCO amendments



PINS Reference	EN010072	
Document No.	SPH_GREX_DCOD3_01	
Authors	BURGES SALMON LLP	
Revision	Date	Description
0	27 April 2016	Issued

Table of DCO Amendments requested - Submitted for Deadline 3

This table lists the changes sought to the DCO from Revision 3A to Revision 4 submitted for Deadline 3 including the changes made in draft in revision 3B consequent upon removal of plots from compulsory acquisition. As advised by planning inspectorate staff this submission has been prepared to include that proposed change.

1. Changes requested by the Examining Authority

Question number	Article/ Requirement	Question	Applicant response
None			

2. Representations with respect to DCO changes

2. Welsh Government					
	Date of Representation	Section/paragraph	Comment	Consultee proposed revision	Applicant's Response
2.1	11 April 2016	Item 82. Schedule 9 (Discharge of requirements)	The WG is concerned that the provisions set out in Schedule 9 are inconsistent with the new Development Management procedures that have been	Wording not specified.	The Applicant has amended Schedule 8 (previously 9) as follows; Applications made under requirements 1. Where an application has been made to the

		<p>introduced in Wales. In particular clause 2(3) which stipulates a 21 day period. In Wales where a statutory consultee is consulted on the approval of a condition they have a period of 21 days in which to provide a substantive response to the LPA. Therefore if the 5 day period (in which the LPA must consult) is added this provides a minimum timescale of 26 days.</p> <p>Notwithstanding the above we note that the DCO does make reference to the Fee Regulations however 3(2) does not reflect the time period for the refund of a fee. Given the minimum time allowance should be extended to at least 26 days we would suggest that the refund of the fee should also be amended from 4</p>	<p>relevant planning authority for any agreement or approval required pursuant to a requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 8 weeks beginning with—</p> <p>the day immediately following that on which the application is received by the authority; or</p> <p>such longer period as may be agreed by the undertaker and the relevant planning authority.</p> <p style="text-align: center;">Further information</p> <p>2—(1) Where an application has been made under paragraph 1, the relevant planning authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.</p> <p>If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 145 business days of receipt of the application, notify the undertaker in writing specifying the further information required.</p> <p><u>If the requirement indicates the consultation must take</u></p>
--	--	--	--

			<p>weeks and reflect the timescales set out in the Fee Regulations to avoid any uncertainty.</p>	<p><u>place with a consultee the relevant planning authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application and. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required within 5 business days of receipt of the consultation. The relevant planning authority must notify the undertaker in writing specifying any further information requested by the consultee within 3 business days of receipt of such a request-and in any.. In the event the consultee does not require any further information, then they must respond to the consultation within 21 business days offrom receipt of the application-consultation notification from the relevant planning authority.</u></p> <p>In the event that the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.</p> <p><u>Provision of information by Consultees</u></p> <p><u>3—(2) Any consultee who receives a consultation under paragraph 2(3) must respond to that request</u></p>
--	--	--	--	--

					<p><u>within 21 days from receipt. Unless sub paragraph (2) of this paragraph applies.</u></p> <p><u>Where any consultee requests further information in accordance with the timescales set out in paragraph 2(3) then they must respond to the consultation within 21 days from the receipt of the further information requested.</u></p> <p>Fees</p> <p>4—(3) 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 (1)(or any regulations replacing the same) is to be paid by the undertaker to the relevant planning authority in accordance with these regulations.</p> <p><u>The time periods for a refund are set from the determination date specified in article 22 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012.</u> Any fee paid under this Schedule must be refunded to the undertaker within <u>—</u></p>
--	--	--	--	--	---

(1) SI 2015/1522

				<p>(3) 4 weeks of—</p> <p>the application being rejected as invalidly made; or</p> <p>8 weeks after the determination date for applications where the relevant planning authority failing fails to determine the application within the period determined under paragraph (1);</p> <p>unless within that period the undertaker agrees in writing that the fee is to be retained by the relevant planning authority and credited in respect of a future application.</p> <p>Appeal</p> <p>5— (1) The undertaker may appeal in the event that—</p> <p>the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or</p> <p>the relevant planning authority does not give notice of its decision to the undertaker within the time period specified in paragraph 1.</p> <p>The provisions of Sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions) applies to any appeal under sub-section (1) as if the</p>
--	--	--	--	--

					<p>requirement concerned was a condition imposed on a grant of planning permission.</p> <p>Interpretation of Schedule 98</p> <p>6 In this Schedule—</p> <p>“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(2);</p> <p>“requirement consultee” means anybody named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.</p>
--	--	--	--	--	---

3. The Applicant’s changes			
	Article/ Requirement	Reason for change	Change
3.1	Preamble	Consequential to the removal of plots to which s132 applied from	The Applicant has amended the fourth paragraph as follows: The Secretary of State, having considered the report and recommendation of the

(2) 1971 c.80

		the scope of compulsory acquisition	single appointed person, is satisfied that the open space comprised within the Order land (as defined in article 2 of the Order), will, where it is to be acquired, be replaced with replacement land which will be subject to the same rights, trusts and incidents as the acquired land, and that accordingly section 131 (4) of the Act applies; and where only new rights are to be created, that the open space will, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that accordingly section 132(3) of the 2008 Act applies.
3.2	Article 19(3) and 19(4) Compulsory acquisition of land	The Applicant has attempted to provide further certainty that exchange land will be vested prior to the compulsory acquisition of open space	<p>The Applicant has amended the Article as follows:</p> <p>3 (a) In this paragraph ‘the access land’ means the land numbered Plot 65 and described in Part 1 of the book of reference and ‘the exchange land’ means the land numbered Plot 42 and described in Part 1 of the book of reference.</p> <p>(b) If the undertaker acquires compulsorily the access land then as from <u>no later than</u> the latest of the dates <u>date</u> mentioned in sub-paragraph (c) of this paragraph, the <u>land to be given in exchange land therefor</u> (<u>‘the exchange land’</u>) must vest in the persons in whom the access land was vested immediately before it was vested in the undertaker, subject to the like rights (including rights of common), trusts and incidents as attached to the access land except for the rights to a private water supply across the access land and described in Part 3 of the book of reference.</p> <p>(c) The dates <u>date</u> referred to in sub-paragraph (b) of this paragraph are:</p>

			<p>(d)(c) is the date on which the plot of the access land is vested in the undertaker;</p> <p>(i) the date on which the exchange land is vested in the undertaker.</p> <p>The power to compulsorily acquire the access land can only be exercised by the undertaker if the exchange land is acquired compulsorily by the undertaker at <u>(which must amount to the same time (unless area as the exchange access land) has already been acquired by the undertaker by agreement.) and can be vested by them subject to the necessary rights trusts and incidents to comply with sub paragraph 3(b).</u></p>
3.3	Article 21 Incorporation of the mineral code	Consequential to the removal of plots from the scope of compulsory acquisition this article is no longer necessary	The Applicant has deleted the Article.
3.4		<i>Consequential to the deletion of Article 21</i>	<p>Subsequent renumbering of all following articles (articles are given their precious number in brackets in this table)</p> <p>Consequential amendment of article references throughout the Order</p>
3.5	Article 21 (22) Compulsory acquisition of rights	Consequential to the removal of plots from the scope of compulsory acquisition Article 21(2) is no longer necessary	<p>The Applicant has amended the Article as follows:</p> <p>—1 The undertaker may acquire compulsorily such rights over the Order land as is<u>are</u> specified in the book of reference and which may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.</p>

			<p>(4) In the case of the Order land specified in column (1) of Schedule 6 (land in which only new and existing rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to—</p> <p>(a) the acquisition of such new rights under paragraph (1) as may be required for the purpose specified in relation to that land in column (2) of that Schedule; and</p> <p>(b) the extinguishment of private rights under article 23 (private rights).</p> <p>(5)<u>(4)</u> Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of 3.6Schedule 7<u>6</u> (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over the Order land under paragraph (1) or (2) the undertaker cannot be required to acquire a greater interest in that land.</p> <p>(6)<u>(5)</u> Schedule 7<u>6</u> (modification of compensation and compulsory purchase enactments for creation of new rights) is to have effect for the purpose of modifying the enactments referred to in that schedule in their application in relation to the compulsory acquisition under this article of a right over the Order land by the creation of a new right.</p>
3.6	Article 25 (26) Guarantees in respect of payment of compensation etc	Consequential to the removal of plots from the scope of compulsory acquisition the liability to be guaranteed has been reduced to reflect the remaining plots	The Applicant has amended the sum secured from £190,000 to £19,000 to reflect the reduced liability following removal of plots

3.7	Requirement 5(1), detailed design parameters Work 2 Penstock	The term “finished” was omitted from the change in the previous version.	The Applicant has amended the parameter as follows: 4.5m (Maximum internal <u>finished</u> diameter)
3.8	Requirement 8 Water management plan	As advised in the Applicant's responses the Applicant has been in discussion with Natural Resources Wales on the detail of the requirements for the water regime, this change reflects the progress of those discussions	<p>The Applicant has inserted the following and moved the existing provisions of the previous requirement 8 to a new requirement (10) drainage plan:</p> <p><u>—1 In accordance with Chapter 9 of the Environmental Statement and the CoCP, the water management plan must include:</u></p> <ul style="list-style-type: none"> <u>(i) Details of the temporary surface water drainage system to be implemented on site during construction of the authorised development.</u> <u>(ii) Details of a water quality monitoring programme including the location and frequency of water body observations and water quality sampling, and the suite of analysis (to include in situ and samples collected for laboratory analysis as necessary).</u> <u>(iii) Details of an action plan describing the process for responding to abnormal or unusual results.</u> <u>(iv) An overview of the measures to prevent water pollution to controlled waters and private water supplies; and</u> <u>(v) An overview of the pollution incident and emergency response procedure.</u> <p><u>(2) The temporary surface water drainage system must not discharge either directly or indirectly into the public sewerage system or to controlled water without the appropriate consents/permissions being in place and the necessary treatment being provided.</u></p>

			<p><u>(3) The water quality monitoring programme and action plan should cover private water supplies, Llyn Padarn, the Nant-y-Betws and the Afon Gwyrfai.</u></p> <p><u>(4) The sampling suite should consider the following parameters as a minimum: Total and dissolved metals, electrical conductivity, pH, suspended solids, chemical oxygen demand (COD), and biochemical oxygen demand (BOD).</u></p> <p><u>(5) Water quality monitoring will be undertaken by the undertaker for the following periods as a minimum:</u></p> <p><u>(i) Be commenced a minimum of [6] months prior to the start of any construction works of the authorised development;</u></p> <p><u>(ii) Be undertaken throughout the construction programme and for a minimum of [6] months post completion; and</u></p> <p><u>(6) The plan must be consistent with the mitigation requirements set out by Chapter 9 of the Environmental Statement and any Environmental Permit conditions imposed by NRW.</u></p> <p><u>(7) The plan must be reviewed by the undertaker no less than every 6 months from the date of approval, on the granting of any variation of this consent, and on the granting of or any variation to the environmental permits required for the authorised development.</u></p> <p><u>(8) The undertaking of and outcome of any review under subsection 6 shall be notified to the relevant planning authority in writing within 7 days of the completion of the review. Such notice must specify whether the undertaker considers an amendment of the plan is required.</u></p>
--	--	--	---

			<p><u>(9) Where, having considered the notice of review under subsection 7, the relevant planning authority considers that an amendment is required the relevant planning authority may notify the undertaker within [7] working days of receipt of the notice of review.</u></p> <p><u>Where the undertaker considers that an amendment is required and/or the relevant planning authority serves a notice under subsection 8, the undertaker must submit an amended plan for the written approval of the relevant planning authority (in consultation with Natural Resources Wales) within 4 weeks of the date of the completion of the review.</u></p>
3.9	New Requirement 9 Silt Management Plan	As advised in the Applicant's responses the Applicant has been in discussion with Natural Resources Wales on the detail of the requirements for the water regime, this change reflects the progress of those discussions	<p><u>—(10) (1) In accordance with Chapter 9 of the Environmental Statement and the requirements of the CoCP, the silt management plan must include:</u></p> <ul style="list-style-type: none"> <u>(i) Measures to prevent pollution of controlled waters by fine sediments suspended in or otherwise transported by runoff originating from construction works of the authorised development.</u> <u>(ii) Pollution prevention measures to protect ground and surface water quality receptors that may be affected by fine sediments in construction site runoff from the proposed works, including private water supplies, Llyn Padarn, Nant-y-Betws, Afon Gwyrfai, and the Afon Seiont.</u> <p><u>(2)The plan must be consistent with the mitigation requirements set out by Chapter 9 of the Environmental Statement.</u></p>

3.10		<i>Consequential to the insertion of new requirement 9</i>	Subsequent renumbering of all following requirements (requirements are given their precious number in brackets in this table) Consequential amendment of references throughout the Order
3.11	Requirement 10 (8) Drainage	As advised in the Applicant's responses the Applicant has been in discussion with Natural Resources Wales on the detail of the requirements for the water regime, this change reflects the progress of those discussions	The Applicant has created a new requirement including the provisions taken form the previous requirement 8 as follows; 10 — (1) The surface water drainage system must not discharge either directly or indirectly into the public sewerage system. <u>(2) No commencement of development of any permanent buildings can be undertaken until written details of the surface and foul water drainage system, including means of pollution control have been submitted to and approved by the relevant planning authority</u> (7) (3) The relevant planning authority must consult Natural Resources Wales on the contents of the proposed water management plan <u>permanent drainage for the authorised development.</u>
3.12	Schedule 4 - Title	The Applicant has amended the title to match a change made to article 13 in a previous revision	Streets to be temporarily stopped up <u>prohibited or restricted</u>
3.13	Schedule 6 Land in which only new and existing rights etc. may be required	Consequential to the removal of plots from the scope of compulsory acquisition Schedule 6 is no longer necessary	The Applicant has deleted the Schedule
3.14		<i>Consequential to the deletion of schedule 6</i>	Subsequent renumbering of all following Schedules (Schedules are given their precious number in brackets in this table)

			Consequential amendment of references throughout the Order
--	--	--	--