Glyn Rhonwy Pumped Storage Development Consent Order

Deadline 7 – Applicant's Comments on the ExA's draft DCO dated 20th July 2016

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1 Summary

1.1 Introduction

1.1.1 On the 20th July 2016 the Examining Authority issued their draft DCO for comment.

1.1.2 This document provides SPH's response and comments to the queries raised within the DCO, these have been provided in a separate document to the DCO for ease of reference.

1.1.3 Where relevant cross-references are provided to other submission documents.

Applicant response to ExA Draft DCO comments and queries

Article/Schedule	ExA Comment/question in DCO	Applicant response
Preamble	Deletion of “Laid before parliament”.	The Applicant concurs with the ExA that this is not required however it forms part of the template and removing it shows as an error on the validation report.
Article 2 “authorised development”	The Applicant has stated [REP4-013, item 2] that this wording should remain as it is included in other DCOs. However, is it required given the flexibility for further development in Part1 of Schedule 1? If the Applicant is concerned that this does not provide sufficient coverage then please could it provide examples of where more could be required?	The wording which has been deleted is required to ensure that all of the minor and ancillary operations required to construct the development are clearly and unambiguously authorised. Consent is normally worded to grant the product of development, not every individual operation necessary to achieve it. The Applicant considers that inclusion of this wording is required, is precedent and is necessary to ensure that the DCO is fit for purpose. The Applicant objects to this proposed deletion.
Article 2 “completion of the works”	Should a definition of “completion of the works” and a related requirement be added to clarify when the authorised development is complete for the purposes of transition from the construction to the operational state for monitoring and enforcement purposes and to clarify when differing requirements for construction and operation apply?	Requirement 19 requires the Applicant to notify the relevant planning authority in writing of the date of commencement of generation on the authorised development. This will be taken as the start of the operational period. The Applicant accordingly considers that the objective of the proposed change has already been met through this requirement and insertion of a new definition and obligation would serve no useful purpose.
Article 2 “environmental statement”	Please refer to the final paragraph of comments on requirement 8.	The Applicant notes that the plans to be certified under article 36 do not update or amend the environmental statement and therefore considers that the wording proposed is inaccurate. The mitigation in the ES has evolved and been refined in the detailed plans as more information has become available.
Article 2 “the land plans”	Land plan number changed for consistency of terminology. Should the land plans be updated to remove ‘special category land’?	Noted The Applicant considers that the special category land should be retained for information.

Article 2 "maintain"	"Order limits" substituted for clarity. The Applicant has previously stated [REP4-013, item 4(i)] that "within the development means within the red line".	Accepted
Article 2 "Order limits"	Changed for consistency with the definition "works plans" (plural).	Accepted
Article 2 "public communications provider"	Please add a footnote with reference to the Communications Act 2003	Footnote added.
Article 2 "the works plans"	For clarity, please could the following areas of the works plans be drawn at a larger scale, in a similar manner to the inset box for Works 1C, 1D, 1F and 1G on works plan GR_160412_DCO_2.04b_v16: - Works 3A and 3B and adjacent areas of Works 2, 4A and 4D on works plan GR_160412_DCO_2.04c_v16 - Works 4B and adjacent areas of Works 4A, 4D and 4E on works plan GR_160412_DCO_2.04d_v16 Please could the scale of 1:2000 shown for the inset box on works plan GR_160412_DCO_2.04b_v16 be corrected?	The Applicant has been in contact with the Planning Inspectorate to clarify this request as the plans provided for enlargement are the overlay plans provided for information in response to a previous Examining Authority query not works plans. These hybrid overlay plans were purely provided for context and information, and also in request to queries at Deadline 2 regarding the extent of the Works Areas. Therefore these plans are not to be certified. The Applicant has provided updated DCO works plans including the error on the insert boxes and amended the numbers in the DCO and certification list.
Article 3 (3)	*Examining authority's insertion of new article 3(3)*	The ExA's draft of the DCO has proposed the insertion of a new provision in Article 3 as follows "(3) This order does not authorise any development which would not be associated development within the meaning of section 115 Act if the authorised were to be carried out in England".

		The Applicant requests in the strongest terms that this provision is not included in any recommended DCO by the ExA or in any granted DCO by the Secretary of State. The Applicant has prepared the application on the basis that no associated development within the meaning of section 115 has been included. The Applicant is entitled to absolute certainty from the Secretary of State as to whether the works specified in the Order have been approved or not. It is not reasonable to expect this to be a matter of interpretation in the manner proposed. This is a point of considerable importance which goes to the heart of the purpose of making a DCO application. The Secretary of State is obliged to make a decision on the application in front of him. If he considers that the application goes beyond section 115 he should exclude the relevant works from the Order, after very clearly asking questions on the matter to allow the opportunity for the applicant to address the point. This was done in, for example, the decision to grant Swansea Bay Tidal Generating Station Order 2015 where a number of works were excluded on the basis that they did not comply with section 115. This is reinforced by the fact that it used to be the case that acceptance letters routinely contained the following paragraph (see, for example, the acceptance letter dated 12 January 2012 for the Able Marine Energy Park application): *"You should be aware that this decision to accept the application does not incorporate a decision on whether all of the development for which authorisation is sought falls within sections 115 of the 2008 Act".* That decision has always, rightly, been made at the point of determination of the application. This is a matter on which an applicant must have a clear decision. Otherwise the applicant does not know whether there are parts of the Order which are vulnerable to a later interpretation that they are not in fact approved, and need

		to be consented through another mechanism with potentially serious timing implications. If there is any question as to the Secretary of State's decision then that can be the subject of judicial review proceedings. If no such proceedings are issued then the applicant has the normal, and necessary, certainty that a consent has been granted which can be relied on. There is no precedent for the ExA's proposed approach. The Applicant has reviewed all seven Welsh DCOs granted to date and none has included this provision. Finally, the interpretation of the provision would be extremely problematic. In England the distinction between the NSIP itself and associated development has rarely been a matter of real significance. This has meant that there are a huge number of inconsistencies as to what has been regarded as associated development in granted DCOs in England, as little or nothing has turned on the point. Any obligation in the Glyn Rhonwy DCO to have to consider the position in England would be a recipe for uncertainty, and would not be reasonable. It is Welsh DCO applications that have had to take the meaning of associated development seriously. The Applicant has done so in framing the current application. No concerns have been raised about the Applicant's approach to this question by Interested Parties. None of the questions raised by the ExA have raised this issue. There is no justification for the inclusion of this provision.
Article 8 (5)	Section 6 of the 1989 Act encompasses various types of licence (generation, transmission, distribution, smart meter, etc.). Consent should be required unless transfer is to a holder of a generation licence under s6(1)(a)?	Accepted

Article 9	The ExA is minded to remove this article unless the Applicant, or any other party, is able to provide a cogent and concise explanation of why it should remain.	The Applicant has already provided a justification for the inclusion of this article and it is not clear from the question in what respect that justification is considered to be inadequate. It is therefore difficult for the Applicant to know what further response is sought on this point. Parliament has decided that nationally significant infrastructure projects consented under the Planning Act 2008 should benefit from statutory authority, meaning that proceedings to stop the activity in question or to punish the person causing the nuisance are barred. (There is compensation regime under Part 1 Land Compensation Act 1973 for the depreciation of land value caused by the use (not construction), of certain public works arising from certain physical factors including noise and vibration. This is a partial quid pro quo for the impacts of the nuisance which cannot be proceeded against in law.) The benefit of statutory authority has been routinely applied to DCOs granted to date, and it is the 'default setting' under the Planning Act 2008. The Applicant considers that this provision was included to put beyond doubt that the effect of section 158 would apply equally across all procedures under which nuisance proceedings could be invoked. In addition, the effect of article 9 of the DCO is to put the interaction of section 82 (Abatement Order sought by aggrieved person) with the Control of Pollution Act 1974 noise control regime on the same footing and section 80 (Abatement Notice by local authority). This is because of the provisions of section 80(9) are not included in section 82. The Applicant strongly objects to the deletion of this article. As the Examining Authority is aware this provision is a standard DCO article taken from the model provisions. It has been routinely included in DCOs and while the Applicant has not checked every granted DCO so far as it is aware an article to the effect of article 9 has been included in every example examined by it. The Applicant accordingly considers that a very clear and justified reason for this deletion is required but has not been provided.

Article 11 (3)	As paragraph (6) of article 13 and as previously suggested by the Applicant [REP1-003, question 5].	Accepted
Article 18 (4)	Please correct the formatting of paragraph (4)).	[awaiting validation report as this is showing as correct on the style]
Article 18 (8)	Vehicles can be brought on the land under (3)(b) and so should also be removed.	Accepted
Part 3 - Powers of acquisition	Draft DCO version 6A [REP5-002] article 24 (acquisition of part of certain properties) has been deleted. Is there adequate protection for landowner in the absence of that article where notice to treat served in respect of part only? Are Gwynedd Council and interested parties content that the following articles that were included in draft DCO version 6A [REP5-002] have been deleted (article numbers are as in version 6A): - Article19(3) and 19(4) (compulsory acquisition of land) - Article 22 (private rights) - Article 23 (2) and 23(4) (acquisition of subsoil only) - Article 24 (acquisition of part of certain properties)	The only plots to be subject to compulsory purchase are the unknown interests in the subsoil under the public road. The land ownership on either side of the highway is known and ownership cannot therefore extend beyond the boundary. Accordingly acquisition of part by the Applicant could only apply laterally under the highway. The Applicant only requires and can therefore only justify acquiring that interest. The land under the pubic highway is already encumbered by the public highway and the rights of the highway authority to control that land, The acquisition of the part sought would not make any wider property holding any more disadvantaged than it currently is.
Article 19	There is no longer a requirement to CA replacement land? How is replacement or mitigation land with the necessary rights now secured?	As there is no longer any compulsory acquisition of special category (open space) land under section 131 and s132 there is no legal need to compulsorily acquire replacement land. The plot of land (plot 65) which was to be replaced has been acquired by agreement and is therefore treated in the same manner as all other open space land affected by the development, it does not require to be replaced. There is no legal need or obligation to secure replacement land with any

		rights at all and no legal basis for such provision being sought. The Applicant has however retained the area forming Work 1H as open space as part of its commitment to appropriate mitigation of the development despite no longer being required to do so to comply with the Planning Act 2008 and the works description for Work 1H remains unchanged.
Article 20	Please could the Applicant correct the text in sub-paragraph (1)(b) “by article of the (application of the Compulsory Purchase (Vesting Declarations) Act 1981(1).”?	Corrected.
Article 29(1)	Insertion of new paragraph (1)	This paragraph creates new definition of "Order" for the purposes of a single Article. Order is already defined as the DCO, a second definition creates unnecessary duplication of terms and confuses the article which already references the relevant TPO. It is also noted that the TPO includes single trees not just groups and woodlands so the definition is incorrect.
Article 29(2)	Insertion of “subject to the prior approval of the relevant planning authority in each case”	The Applicant is required to agree the extent of felling in advance with the relevant planning authority, the rewording of this to “in each case" undermines the purpose of this article which is to disapply the requirement to have consent under the TPO for each works by creating a process parallel to that consenting regime but without any ability to appeal or prescribed timescales. The Applicant accordingly rejects this amendment.
Article 30(1)	Insertion of “subject to the provisions of Schedule 7”	Works under streets and the protection of statutory undertakers apparatus under streets is governed by the New Roads and Street Works Act, the protective provision are not required in this case as statutory protection applies and cannot be disapplied or superseded. The insertion of the protective provision in this case would mean that any works required to comply with both the law and the schedule

		creating unnecessary duplication of control and administrative burden. Further in any dispute this double control would cause confusion as to the appropriate regime and governing of the relationship. It is unnecessary and inappropriate to control through the DCO a matter already controlled by statute. The Applicant accordingly rejects this amendment.
Article 30 (3)	"public communications provider" is defined under article 2(1).	Noted
Article 31 (7)	This definition is given in the corresponding model provision and included for certainty.	Apparatus is defined in article 2, to provide a further and slightly different definition in article 31 does not increase certainty but causes a conflict of definitions and creates confusion. The Applicant accordingly objects to the addition.
Article 36 (1)(j)	Dust management plan renamed as requested by Gwynedd Council [REP5-005, question 10.2(b)]?	Agreed
Article 36	The following plans and documents in the following order are suggested for inclusion in the list of the documents to be submitted to and certified by the Secretary of State: - the outline code of construction practice (which includes [REP6-007, chapter 4] the outline pollution prevention plan, the outline landscape and reinstatement plan, the outline emergency response & flood risk management plan, the outline waste management plan, the outline habitat management plan, and the outline breeding bird method statement; as well as other matters that have been developed from the environmental statement [REP6-003, chapters 1, 2, 3 and 5]). The Applicant has previously noted [REP5-005, question 1.12(b)] that the code of construction practice is to be certified.	*COCP* - Agreed

	- the outline excess water management strategy [REP6-009] - the schedule of mitigation [REP6-003] (which helpfully clarifies and corrects some of the measures included in the environmental statement) With the inclusion of the outline code of construction practice, should the outline pollution prevention plan, the outline landscape and reinstatement plan, the outline emergency response & flood risk management plan, the outline waste management plan, the outline habitat management plan, and the outline breeding bird method statement be removed from article 36 because they actually form part of the outline code of construction practice and are not separate outline plans? Can the Applicant confirm that the versions of the above certified plans to be submitted to the Secretary of State will be unaltered from the last versions submitted to the examination, save for any alterations agreed in writing with the Secretary of State? The Applicant is asked to consider the best means of identifying and referencing the plans and documents to be submitted to the Secretary of State to place their identity and authenticity beyond doubt. As a minimum please could: - the references used in paragraph (1) include the version number of each certified document; and - the certified documents themselves (including those in the outline code of construction practice [REP6-007]), clearly show titles (including 'outline') and version number consistent with paragraph (1)?	*excess water management strategy* - Agreed *schedule of mitigation* - The Applicant maintains its positon that this document is an informative signposting document only and should not be a certified document. The Applicant accordingly objects to this inclusion as the mitigation is already secured via the topic specific management plans. These are only summarised in the CoCP, the detail is contained in the outline plans which will be separate documents. No – the Applicant is unable to certify the outline plans as (a) the WTMP, SMP, Biosecurity and Excess Water Management Plan may be amended as per the Environmental Permit application and (b) in the Rule 17 request received on the 20th July, the ExA has also asked for comments on other topic specific plans from NRW and Gwynedd Council, which means that the plans submitted at Deadline 7, may have to be amended prior to the end of the examination period. The Applicant advises that is considers that it will be possible to finalise the following outline plans before the close of the examination: • Dust Control and Air Quality Management Plan • Construction Traffic Management Plan • Landscape and Reinstatement Plan • Construction Noise Management Plan • Emergency Response and Flood Risk Management Plan

		• Waste Management Plan • Habitat Management Plan • Breeding Bird Method Statement • Air Quality Baseline Monitoring Plan • Materials Management Plan • Ordnance Management Plan • Land Discovery Plan • Health and Safety Plan • Operational Noise Management Plan • Archaeological Compensation and Enhancement Strategy. The following plans will be finalised as far as possible but require the further input listed: CoCP — subject to ongoing NRW discussions and amendments through the Environmental Permits plus amends required in Rule 17 questions Water Management Plan — subject to ongoing NRW discussions and amendments through the Environmental Permits plus updates as required by Section 7 of the Rule 17 Pollution Prevention Plan — subject to ongoing NRW discussions and amendments through the Environmental Permits Silt Management Plan — subject to ongoing NRW discussions and amendments through the Environmental Permits plus updates from Section 7 of the Rule 17

	For clarity, should the details of all certified documents be included in a separate schedule, as has been for some previous Orders, such as Tidal Lagoon Swansea Bay (refer to Schedule 7)?	Biosecurity Plan subject to ongoing NRW discussions and amendments through the Environmental Permits Excess Water Management Strategy subject to ongoing NRW discussions and amendments through the Environmental Permits The Applicant has no preference whether this list is retained in the article or moved to a schedule but does not consider it necessary both to certify the documents and set out the details of them in the DCO.
Schedule 1 Part 1	Please could the Applicant ensure consistency of the descriptions used here and in requirement 5? For example, is there a difference between 'temporary laydown storage area' and 'temporary storage of materials and plant and fencing'? Should it be 'laydown' or 'lay down'?	Amendments have been made to this effect Yes. The temporary laydown storage areas are part of the construction compound works descriptions and therefore needed throughout the build programme. Temporary storage on other areas is for short term storage of the defined items being used on that area at that time. "laydown" has now been used throughout.
Schedule 1, Work No 3A (e)	Should Work No 3A include the tailrace, temporary construction tunnel and access shaft, as depicted on the Works Plan?	No. Work 3A is the above ground elements, Work 3B is the below ground elements, these works areas overlap on the works plans due the vertical division.
Schedule 1, Work No 4B	Should Work No 4B include the spillway infrastructure to Llyn Padarn which appears to extend into this area?	No. The spillway work (4E) overlaps work 4B and properly includes that permanent element. Work 4B consists of temporary elements only.
Schedule 1, Work No 4C	Please could the Applicant consider whether the description of Work No 4C can include some of the further clarification that it provided [REP5-005, question 2.1], particularly with regards to	No. Work 4C, as with all of the elements, is subject to further site investigation and detailed design. The limits of the works have been drawn as tightly as possible to allow sufficient room for the potential

	Works proposed in the vicinity of Lake View Hotel? The description should be consistent with the impacts, including noise and dust, considered in the environmental assessment. Similarly can clarification be provided in respect of Works in the vicinity of Glyn Peris Guest House and Glyn Peris Cottage?	works to be safely carried out. The whole of the works area has been assessed for the impacts arising from those works. How much slate requires to be moved will depend on the composition and stability of the mounds which requires further detailed investigation. Any restriction on works in this area is unacceptable to the Applicant and risks the DCO becoming unfit for purpose. The Applicant also refers to its response to question 2.1 of the rule 17 letter on this point. The Applicant has previously advised in the response to First Written Question 2.2 that a layout of the works within 4C cannot be provided at this time but that noisy activities will be located away from the eastern boundary of the Order Limits which adjoin the two Glyn Peris properties. This is secured in the CoCP. As the overlay on to the works plan (drawing GR_160412_DCO_2.04d_v16) shows, the works within 4C within the proximity of the two Glyn Peris properties relate to any reprofiling of existing slate mounds to allow for the construction of the Q6 dam. As above, any restriction on works in this area is unacceptable to the Applicant and risks the DCO becoming unfit for purpose.
Schedule 1, Work No 4F	Should Work No 4F include the spillway infrastructure to Llyn Padarn which appears to extend into this area?	No. Works 4E and 4F overlap, the spillway infrastructure is covered by Work 4E.
Schedule 1, Work No 4G	Table 1 lists items which are described as “further development” i.e. over and above that described in the Works. However some items in Table 1 already appear in the Works descriptions, e.g. temporary construction site offices in Work 1D. For clarity, can these items either be described in the relevant Work or in Table1 and not duplicated?	No. The Applicant has already made numerous and substantial changes to this section of the DCO in order to provide the level of detail being sought despite the detailed design of the development not yet having been undertaken and this permission being essentially outline in nature and based on the well-established Rochdale envelope approach which has assessed the worst case scenario based on the maximum parameters given in the parameters table. To attempt to refine this any further risks reducing flexibility to a point where the DCO risks becoming unfit for purpose as without a detailed design some flexibility must be maintained.

Schedule 1, table and last paragraph	The scope for further developments provides considerable flexibility. Please can it also be made clear that the requirement for further development to "not give rise to any materially new or materially different effects from those assessed in the environmental statement" applies to all further developments – i.e. both the items included the body of the text and those included in the table?	The Applicant objects to some of wording changes made to this section. The Applicant reiterates is not normal planning practice to list in any development description every step or type of activity which is required to allow the construction of the approved development. The works which are required to construct the authorised development need to be authorised in the DCO. The restriction of the minor and ancillary works in this case has become overly prescriptive and rigid and risks becoming so circumscribed that the works necessary to carry out the authorised development (including complying with the various plans) are unduly contained due to the restriction on how the development can be constructed. The deletion of "or expedient" reduces flexibility to allow the Applicant to carry out the development in the best manner according to good practice as it reduces the ability to do works to those necessary rather than allowing those which would assist in delivering the authorised development in the best manner. The Applicant accepts the wording on "materially different" effect. The Applicants does not accept the deletion of "significant". This deletion would set a very low bar for minor works and prevent the undertaking of minor or ancillary works with insignificant effects or beneficial effects. The Applicant further notes that effects may not only be environmental but could be for example socio-economic and the change to insert this actually restricts the applicable effects. The Applicant has made a proposed amendment to make it clearer that this restriction also applies to the table.
Schedule 1, Part 2	Use of paragrapgh and sub-paagraph	The Applicant notes that while also referred to as "requirement" each requirement is a paragraph of Part 2 of Schedule 1. For consistency with all other schedules the requirement itself is referred to as the paragraph and the divisions thereof as sub-paragraphs.

Schedule 1, Part 2, 4	Also refer to related suggestions for requirement 13, which includes time period for commencement.	The Applicant is unclear what is being sought here. This comment appears circular as the comment as requirement 13 refers to the changes to requirement 4. The time limit for commencement is set out in requirement 2 and is the standard 5 years. No development may commence until the phasing plan required under requirement 4 is approved.
Schedule 1, Part 2, 5, table	Insertion of new maximum parameter on the reservoir volumes	The Applicant rejects these changes which specify the maximum operating capacity of the reservoirs not the maximum capacity allowing for freeboard and an allowance for head. The figure given is too low and inappropriate. In any case the Applicant does not consider that this parameter is requires as the size of the reservoirs is governed by the dam parameters which are limited.
Schedule 1, Part 2, 5, table	Should Q6 spillway infrastructure for Abstraction and Discharge be included for Works Package 4B? For tidiness, please could the Applicant make the capitalisation, use of commas and descriptions used in the above table more consistent?	No. The spillway work (4E) overlaps work 4B and properly includes that permanent element. Work 4B consists of temporary elements only. Amendments have been made to address this point.
Schedule 1, Part 2, 5(6)	Please could the means by which adherence with ICNIRP guidelines [REP5-005, question 11.1] is required be clarified?	ICNIRP guidelines relate to design mitigation and have been references in the schedule of mitigation as guidance which will be used to inform the detailed design. It is not required to list every relevant design guidance in the requirements and the Applicant considers that it would be otiose to reference all relevant guidance to every element of the project.
Schedule 1, Part 2, 6(2)	Has the application version of the CoCP (Appendix 16.1 of Volume 3 of the Environmental Statement) in the draft DCO (e.g. paragraphs 6(2), 6(3), 7(2), 16(2)) now been fully superseded by the outline CoCP and the relevant outline management plans certified by article 36? If it hasn't then could it be, for clarity?	Yes.

	On this basis (and recognising that requirement 8 can establish the relationship between the CoCP and the outline CoCP) suggestions have been made for amendments to paragraphs 6(2), 6(3), 7(2), 16(2)?	The changes made to requirement 6(2), 6(3) and 7(2) are accepted Requirement 16(2) has been superseded by requirement 8 and its' deletion is accepted.
Schedule 1, Part 2, 6(3)	Please refer to comments on paragraph 6(2).	Accepted
Schedule 1, Part 2, 7	Please refer to comments on paragraph 6(2).	Accepted
Schedule 1, Part 2, 8	There should be scope for the standards set out in the outline plans to be tightened later, which "must comply with" would not necessarily allow.	The Applicant does not agree with this statement. 'Must comply with' is a minimum, it does not prevent exceedance of the standards which would still comply with that minimum. The Applicant does not agree that any more than compliance could be secured as anything further would be aspirational, lack definition and be unenforceable.
Schedule 1, Part 2, 8(v)	Presumably the code of construction practice should be added as it must comply with the outline code of construction practice, etc.? The certified outline plans develop and include clarifications and corrections to the environmental statement. In order to avoid conflict, and for the avoidance of doubt, please could it be made clear that in case of conflict the outline plans to be certified under article 36 (certification of plans etc.) take precedence over the measures described in the environmental statement?	Accepted, however the insertion of (v) any other plans or documents referred to in this order is rejected as that makes no sense in the context of a requirement to comply with outline plans, only the outline plans should be listed. The ES gives the base mitigation measures, it is entirely normal for these to evolve as the design progresses. The development is required to comply with the plans which are based upon and refinements on the ES, the Applicant does not accept that there is a conflict.

	Please could all references to the “environmental statement” (including requirements for management plans to comply with them) or specific parts thereof instead be to the “environmental statement as updated and supplemented by the schedule of mitigation and the outline plans certified under article 36 (certification of plans etc.) of this Order”? Alternatively, should the definition of the “environmental statement” in article 2 be amended to include these updates and amendments?	The Applicant notes that the plans to be certified under article 36 do not update or amend the environmental statement and therefore considers that the wording proposed is inaccurate. The mitigation in the ES has evolved and been refined in the detailed plans as more information has become available. As above the Applicant does not consider that the schedule of mitigation should be a certified document, it is simply good EIA practice to produce this as a sign posting document and it is informative only.
Schedule 1, Part 2,9	Please could the Applicant review and, where necessary, correct the use of initial capitals in similarly structured sub-paragraphs to the above throughout the draft DCO?	Amendments have been made on this point however the Applicant disagrees with some the changes made.
Schedule 1, Part 2,9 (5)(ii)	NRW have requested [REP5-049, question 1.16] 12 months of water quality monitoring. Please could the applicant and NRW review this request and agree any necessary re- wording of this requirement?	The Applicant notes that the water management plan is a construction phase plan. The post construction monitoring has been moved to a new requirement 10. This requires 6 months post construction monitoring for private water supplies which are within the remit of Gwynedd Council and 12 months for surface water which is within the remit of NRW. NRW have been consulted on this new requirement and have stated that they would not provide comments prior to the deadline and would provide comments at Deadline 8. The Applicant notes that the operation water quality monitoring of discharges is controlled by the environmental permits and not the DCO.
Schedule 1, Part 2,12(4)	“any land affected” appears vague - can this be clarified so that it is clear that it includes all potential impacts on all relevant types of receptor. How have potential impacts arising from extended working hours been considered in the environmental statement?	“land affected” is deliberately intended to be all encompassing. Any attempt to define this would narrow its applicability and reduce the scope. This is outlined in the CNMP under COPA.

Schedule 1, Part 2,12(5)	Insertion of new sub-paragraph 5	The Applicant considers the wording of this requirement to be unduly restrictive as any environmental effect, including beneficial effects, would be caught and the test is accordingly too low.
Schedule 1, Part 2,12(5)	For clarity, completeness and the avoidance of doubt, please could this requirement be extended to include the following: - No tunnelling work is permitted on public holidays or between 13.00 on any Saturday to 07:00 the following Monday morning, without the prior written approval of the relevant planning authority which is not to be given unless the undertaker is able to satisfy the relevant planning authority that noise generated by tunnelling during these times will not unduly affect local residents [REP5-011, appendix A]. Refer to comments from GC [REP5-044, question 7.9(a)]. - No explosions are to take place on public holidays or outside the hours set in paragraph (1) [REP5-005, question 9.12(b)].	The Applicant objects to the proposed changes. The proposed amendment conflicts with requirement (1). Underground works, including tunnelling are 24 hours and have been assessed for this in the ES. Blasting will not be undertaken outside of the pre-agreed slots during the working hours (as outlined in the CNMP) and this therefore includes during the night. Only works to clear and prepare for the next blast will be carried out. Blasting for reprofiling is already restricted in the construction noise management plan. The representation referred to in this query relate to ordnance disposal not blasting. For the avoidance of doubt the Applicant will undertake disposal during working hours wherever possible but where it is urgently necessary for health and safety to undertake disposal outside of those hours cannot be restricted from doing so.
Schedule 1, Part 2,13	Also refer to related suggestions for requirement 4.	The Applicant is unclear what is being sought here. The time limit for commencement is set out in requirement 3 and is the standard 5 years. No development may commence until the phasing plan required under requirement 4 is approved.
Schedule 1, Part 2,14	The term ‘environmental licence’ is vague. Can the applicant be more specific if additional works are likely to be required by some other consent, permit or licence?	No. To list every additional licence, permit or consent which may be required would be unduly onerous and restrictive and fails to allow flexibility for changes in the environmental permitting regimes which operate separately to the Planning Act.
Schedule 1, Part 2,16	Please refer to comments on paragraph 6(2).	Accepted

Schedule 1, Part 2,18(4)	Please add a footnote with reference to the Reservoirs Act.	Added.
Schedule 3	Please could the Applicant review and, where necessary, correct the depiction of line colours and whether they are solid or dashed as referred to in the following table and on the access plan. For clarity, please could the depictions be made consistent? Could the same depictions also be used on the works plan? For example: - The Public Rights of Way 42 Waunfawr 56 Llanberis is depicted as a solid green line on the access plan and a solid purple line on the works plan. - The Public Right of Way 9 Waunfawr to be stopped up is described as a dashed purple line in the table, but shown as a solid purple line on the access plan. - The "informal path" is depicted on the works plan as a dash line and half way reverts to a solid purple line.	The Applicant has reviewed the schedule. This is incorrect. The right of way is shown with a dashed brown line as stated. It is agreed that this should read **solid** purple line. These descriptions refer to the access plan not the works plan.
Schedule 7	Please could the Applicant provide evidence, or give references to evidence previously submitted, that all statutory undertakers have accepted the protective provisions included in Schedule 7 and in doing so advise whether a response has been received from BT [REP5-025] and clarify the current position with regards to negotiations with SP Manweb [REP5-027]?	Please see the submitted statements of common ground. BT have been given the opportunity to comment and have chosen not to respond on the detail. The Applicant has received only an automatic response that they require six days' notice of proposed works.

	If SP Manweb have not yet agreed to the protective provisions, please could the Applicant set out the areas still in dispute and the anticipated timetable for resolution?	SP Manweb have engaged in the process but have not yet commented in– detail on the proposed protective provisions. The Applicant cannot advise on areas of dispute as SP Manweb have not provided comment to allow this to be established. A timescale for agreement cannot be given as the applicant has no ability to requrie SP Manweb to respond.
Schedule 7, Part 2	Dwr Cymru Cyfyngedig are requested to consider and advise whether these provisions are adequate to protect its undertaking. Should the numbering of paragraphs for this Part 2 restart at 1, as the suggested changes below? If not then some of the cross-referencing will need to be corrected. Please could acronyms be defined before they are used?	- This has been amended This schedule is based on DCC's standard provisions as agreed between the Applicant and DCC. The order is slightly different to the rest of the DCO for this reason.
Schedule 7, Part 2, 4(2)	15(2) not necessary as covered by 11(2), below?	The Applicant accepts this change but as above this schedule is based on DCC's standard wording and their view would be sought before the Applicant made such a change. DCC is unable to given their view for this Deadline and this will be sought for Deadline 8.
Schedule 8, 2	The specification of timings in this and subsequent paragraphs are currently a mixture of business days and calendar days, which could have consequences for the relevant planning authority's (RPA's) ability to comply. For example , if the RPA receives an application on Friday 1st, issues notice to the consultee on Friday 8th (the 5th business day), the consultee receives the notification on Monday 11th and responds 21 calendar days later with a request for information, the RPA would not be in a position to comply with the requirement "in any event within 28 days of receipt of the application". Can the timings be reviewed and made consistent?	Amendments have been made to address this point.

Schedule 8, 2 (3)	Sub-paragraph 2(3) has not been amended in accordance with the Applicant's response [REP6-002, page 6-2] to comments from NRW [REP5-049]. Please could the Applicant suggest a correction to the text "… within 5 business 21 days of receipt …" and "…within 2128 days from receipt …" in its response [REP6-002, page 6-2]? Please could NRW respond to the Applicant's (corrected) response to its comments and please could the Applicant propose an update to sub-paragraph 2(3) accordingly?	The following is suggested: (1) If the requirement indicates that consultation must take 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. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required within 15 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. In the event the consultee does not require any further information, then they must respond to the consultation within 20 business days from receipt of the consultation notification from the relevant planning authority.
Schedule 8, 4(2)	Please add a footnote with reference to The Town and Country Planning (Development Management Procedure) (Wales) Order 2012.	Added