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Your Ref:  
To named Interested Parties  
Our Ref: EN010072  
Date: 21 December 2016

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Dear Sir/Madam

**Planning Act 2008 (as amended) and the Infrastructure Planning  
(Examination Procedure) Rules 2010 (as amended)**

**Application by Snowdonia Pumped Hydro Limited ("the Applicant") for an  
Order Granting Development Consent for the Glyn Rhonwy Pumped Storage  
(Generating Station)**

**REQUEST FOR COMMENTS FROM THE APPLICANT, NATURAL RESOURCES  
WALES, THE MINISTRY OF DEFENCE, GWYNEDD COUNCIL, GWYNEDD  
ARCHAEOLOGICAL PLANNING SERVICE AND CADW**

Following the completion of the examination on 8 September 2016, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") on 8 December 2016. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

There are several issues on which the Secretary of State would be grateful if parties identified in bold below could provide an update or further clarification as necessary.

**Statutory Nuisance**

The Secretary of State notes that the Applicant's Explanatory Memorandum dated 4 July 2016 which was submitted for Deadline 6 indicates that its Article 9 is based on Model Provision 7 of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 which was repealed by the Localism Act 2011. He also notes that the provision in the Applicant's proposed development consent order had been expanded by the Applicant to enable the undertaker to rely on it in respect of air quality and noise from streets which have been identified as a risk during construction.

However, the Secretary of State wishes to consider whether the Applicant's proposed Article 9 wording is appropriate to the risks of nuisance that have been identified. In considering this matter the Secretary of State has produced some alternative wording for Article 9 – see below - and would be grateful for the views of the **Applicant** and **Gwynedd Council**.

*1. “(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs(c), (d), (e), (g) of section 79(1) of that Act solely caused by noise, other than vibration, no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—*

*(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(2); or*

*(b) is a consequence of the construction of the authorised development and that it cannot reasonably be avoided.*

~~*(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.*~~

*(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, will not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.”*

## **The Historic Environment**

The Secretary of State is considering whether the possible effect of the project on the historic environment, including heritage assets and the overall Dinorwig Registered Landscape of Outstanding Historic Interest.

Given the possibility identified by the Applicant of significant impacts on heritage assets, some of which may be of national significance, the Secretary of State wishes to consider whether additional mitigation measures are necessary to provide comfort that protection of the historic environment will be secured. The Secretary of State is, therefore, considering whether to include in any development consent order that he might issue the following Requirement:

### **“Archaeological compensation and enhancement strategy**

*2.—(1) The archaeological compensation and enhancement strategy must comply with the minimum standards in the outline CoCP and outline archaeological*

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(2) 1974 c.4D. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

compensation and enhancement strategy certified under article 36 (certification of plans etc.).

(2) *The strategy under sub-paragraph (1) must include a written scheme of investigation approved by the relevant planning authority prior to the commencement of any of the authorised development and that must include provisions for:*

- (a) a pre-commencement survey of the existing bomb store identified in Chapter 11 of the environmental statement and a watching brief during any works in its vicinity;*
- (b) other areas where a watching brief is required;*
- (c) the measures to be taken to protect, record or preserve any significant archaeological remains that may be found;*
- (d) the analysis, archiving and publication of the results of any archaeological investigations;*
- (e) the organisation and deposition of the archaeological investigation archive into an approved repository; and*
- (f) areas where palaeo-environmental sampling must be carried out to establish the presence and extent of any surviving peat deposits and the measures to be taken where any such deposits are found.*

(3) *The strategy under sub-paragraph (1) must include the identification of any opportunities for interpretation and public engagement in relation to the existing bomb store identified in Chapter 11 of the environmental statement.*

(4) *Subject to requirement 21, the authorised development must be constructed, maintained and operated in accordance with the approved archaeological compensation and enhancement strategy."*

The Secretary of State would be grateful if the **Applicant, CADW, the Gwynedd Archaeological Planning Service and Gwynedd Council** could provide any further comments on the acceptability of the potential effects of the proposed Development on the historic environment and the suitability of the possible Requirement outlined above.

### **Code of Construction Practice and Heavy Goods Vehicles Movements**

The Secretary of State is considering whether it would be appropriate, in any development consent order that he might issue, to make changes to the Applicant's proposed development consent order by amending the proposed Requirement 6 dealing with the above matter by the inclusion of the following:

(1) *"The CoCP required under sub-paragraph (1) must include provision to ensure that the underground excavation of Works 2 is to progress in the direction from Work 3A to Work 1A.*

(2) *The construction traffic management plan required under sub-paragraph (2) must include provision to ensure that the total number of heavy goods vehicle movements during construction is restricted to the maximum projected number detailed in the environmental statement in:*

- (a) tables 12-13 to 12-16 for movements along Ffordd Cefn Du to and from Work Nos 1A, 1B, 1C, 1D, 1E, 1F, 1G and 1H;*
- (b) tables 12-17 to 12-21 for movements, none of which are to be along Ffordd Cefn Du, to and from Work Nos 2, 3A, 3B, 4A, 4B, 4C and 4D; and*
- (c) table 12-22 for movements to and from Work Nos 4E and 4F.*

(3) *The habitat management plan required under sub-paragraph (2) must include:*

- (a) pre-commencement surveys for floating water-plantain to be undertaken in Llyn Padarn in the vicinity of the spillway infrastructure; and*
  - (b) pre-commencement surveys to be undertaken for tree roosting bats; and*
  - (c) details of the process for responding to the findings of pre-commencement surveys, including the submission and approval of necessary mitigation measures before development commences.*
- (4) Subject to the provisions of requirement 21, all construction works for the authorised development must be carried out in accordance with the approved CoCP, including any plans approved as part of it."*

The Secretary of State considers that such a change would:

- (i) secure that underground excavation of the penstock (Work 2) would progress in the direction from the lower reservoir (Work 3A) towards the upper reservoir (Work 1A) - '1' above;
- (ii) secure limits to the movements of heavy goods vehicles on access routes during construction; and
- (iii) secure pre-commencement surveys for floating water plantain in the vicinity of the spillway infrastructure in Llyn Padarn and for tree-roosting bats.

The Secretary of State would be grateful for the views of the **Applicant, Gwynedd Council** and **Natural Resources Wales** on whether it is appropriate to include the paragraphs as set out above.

### **Decommissioning Plan**

The Secretary of State notes that the Welsh Government and others expressed concerns about funding for decommissioning of the proposed Development. The Secretary of State, therefore, is considering in any development consent order that he might issue, whether an addition in the following terms should be made to Requirement 20 (Decommissioning plan) in the version of the Development Consent Order submitted by the Applicant in response to Deadline 9 submissions along the following lines:

*"(7) An outline decommissioning plan must be submitted before commencement of generation on the authorised development and must:*

- (a) identify the nature of the decommissioning works to be undertaken;*
- (b) include the anticipated timetable for implementation of decommissioning; and*
- (c) demonstrate how the funding for decommissioning is secured.*

*(8) An updated outline decommissioning plan must be submitted for the approval of the relevant planning authority every 5 years from the date of commencement of generation until the decommissioning plan is submitted under paragraph (1).*

*(9) The decommissioning plan submitted under paragraph (1) must be substantially in accordance with the latest outline decommissioning plan approved by the relevant planning authority."*

The Secretary of State would be grateful for views from the **Applicant** and **Gwynedd Council** on his proposed amendment.

## **Crown Interests**

The Secretary of State notes that the Applicant seeks the compulsory acquisition of any unknown ownership interests in the subsoil (to permit the installation, operation and maintenance of underground pipes) in two plots referred to in the Book of Reference as plots 4 and 7 in which the Secretary of State for Defence is identified as having an interest. The Secretary of State would be grateful if the **Ministry of Defence** could indicate whether its consent under section 135(1) of the Planning Act 2008 has been granted in respect of Plots 4 and 7.

## **Access Land**

The Secretary of State notes that mitigation access land is identified as 'Countryside Rights of Way Mitigation Land (68.8 acres)' in Figure 4 of the Common, Access Land and Public Rights of Way Strategy` submitted by the **Applicant**. The Secretary of State would be grateful if the **Applicant** could indicate whether the designation of the mitigation access land under section 16 of the Countryside and Rights of Way Act has been secured.

## **Protective Provisions**

The Secretary of State notes that the Applicant and SP Manweb were discussing the terms of any protective provisions to be included in any DCO that the Secretary of State might make at the conclusion of the Examination. The Secretary of State would be grateful if the **Applicant** could indicate whether agreement between the parties has been reached or, in the event it has not, whether there is a timeline for reaching such agreement.

## **Other Legal Agreements**

The Secretary of State notes that an application has been made to Gwynedd Council for agreement under section 278 of the Highways Act 1980 for highway improvement works to Ffordd Cefn Du. The Secretary of State would be grateful for any update from the **Applicant** and **Gwynedd Council** on this matter. If the agreement has not been made, he requests those parties` views on whether the matter should be secured through a requirement in any DCO that he might make and, if so, on the wording of such a requirement.

The Secretary of State notes that the Applicant proposes to discharge excess water from Quarry Q1 into the Nant-y-Betws surface water body which is connected to the Afon Gwyrfai and Llyn Cwellyn Special Area of Conservation and has applied to Natural Resources Wales ("NRW") for an Environmental Permit for such discharges. The Secretary of State would be grateful for an update from the **Applicant** and **Natural Resources Wales** on the status of the permit application.

**The deadline for any response is 10 January 2017.**

Responses to the points outlined in this letter should be submitted by email to [GlynRhonwy@pins.gsi.gov.uk](mailto:GlynRhonwy@pins.gsi.gov.uk)

Please send any hard copy response to the Glyn Rhonwy Pumped Storage (Generating Station) Case Team, Secretary of State for Business, Energy and Industrial Strategy c/o the Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN.

If you will have difficulty in submitting a response by the consultation deadline, please inform the Case Team.

Your response will be published on the Glyn Rhonwy Pumped Storage (Generating Station) project page of the Planning Portal website as soon as possible after 13 January 2017.

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the Glyn Rhonwy Pumped Storage (Generating Station) Project, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

***Giles Scott***

Giles Scott

Head of Energy Infrastructure Planning and Coal Liabilities