

Glyn Rhonwy Pumped Storage Development Consent Order

Applicant's Response to Secretary of State's Request for Comments
dated 7th February 2017



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1.	Development Commissioning: Flood Risk Plan		
1.1	All concerned, including the Applicant, Gwynedd Council and Natural Resources Wales in particular	<p>The Secretary of State, mindful though of the provisions of the Reservoirs Act 1975, asks whether there would be particular merit in including in any DCO that he might make, specific provision to deal with the approval of pre-construction plans to take into account flood risk. The aim of the provision would be to ensure that the potential risks and their mitigation for the Development as a whole (including the interconnection between the reservoirs) were mapped and approved by the appropriate body, after consultation with Gwynedd Council, prior to the commencement of works on the two proposed reservoirs and related infrastructure. The Secretary of State is, therefore, considering whether to include a provision along the following lines in any development consent order that he might make:</p> <p><i>“Authorised development commissioning: onsite emergency flood plan</i></p> <p><i>[] - (1) Prior to the commencement of works comprising the authorised development, as listed in Part 1 of Schedule 1 to this Order, the Applicant must agree with Natural Resources Wales an onsite emergency flood plan.</i></p> <p><i>(2) A plan submitted under paragraph (1) may only be agreed by Natural Resources Wales after consultation by them with Gwynedd Council.</i></p> <p><i>(3) Any plan agreed under paragraph (1) may be varied with the agreement of Natural Resources Wales only after consultation with Gwynedd Council.”</i></p>	<p>Within the COCP submitted at Deadline 9 (SPH_GREX_DC0D2_03 (rev5) COCP (clean)), section 4.4 outlines the contents of the Emergency Response and Flood Management Plan. Paragraph 4.4.2 outlines the procedures to be employed to minimise impacts from, and also what to do when a flood occurs. Paragraph 4.4.6 outlines that the “project emergency plan” be developed. Both will be developed by the Principal Contractor.</p> <p>Please also review our answer on this point as submitted in SPH_GREX_WED9_01 on the 5th September at location 1.14, and also SPH_GREX_SWQD5_01 at location 1.37.</p> <p>The Applicant considers that Flood Risk Plan / Emergency Flood Plan would be covered under the Requirement for the CoCP and that a new requirement is therefore not necessary.</p>
2.	Decommissioning: complete project decommissioning plan		
2.1	All concerned, including the Applicant, the Welsh Government, Gwynedd Council and Natural Resources Wales in particular	<p>The Secretary of State, mindful though of the provisions of the Reservoirs Act 1975, asks whether there would be particular merit in including a dedicated provision on the approval of decommissioning plans for the Development as a whole (including the interconnection between the reservoirs) in any development consent order that he might make. An outline decommissioning plan, including financial provisions, would have to be approved by Gwynedd Council prior to the commencement of works on the two proposed reservoirs and related infrastructure.</p> <p>The Secretary of State also notes that the decommissioning provisions currently being considered (article 20 of the draft DCO of 5 September 2016) cover the decommissioning of the Development following commencement of generation. The Secretary of State further notes that the current provision does not cover the possibility of the abandonment of the Development during its construction. He would be grateful for comments from consultees on that issue.</p>	<p>As previously submitted the Applicant has no objection to the requiring of an outline decommissioning plan but considers that the detail of the requirement proposed is too onerous.</p> <p>If the scheme were to be decommissioned at any time then there would be a requirement under the Reservoirs Act, 1975 to leave the reservoirs in a safe state and would fall either under “discontinuance” or “abandonment”, as defined in the Act and in either case would require a certificate from an AR Panel Engineer certifying either case, following works to render them safe against flood risk. Therefore, in terms of the reservoirs, then decommissioning of the plant would require certain functions being fulfilled under the remit of the Reservoirs Act and be dealt with accordingly.</p> <p>The Applicant has no particular objection to the proposal to include abandonment in principle, though it is not normally addressed in DCOs or other equivalent consents. However any provisions in the DCO should not undermine, contradict or conflict with the Reservoirs Act and so it is difficult to see particular merit in a dedicated provision on the approval of the</p>

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		<p>In addition, the Secretary of State notes that in its response to his consultation of 21 December 2016, the Applicant stated that it did not believe that proposed Requirement 20(7)(c) (which stated that “The Applicant.....must demonstrate how funding for the decommissioning is secured”) was appropriate and suggested a form of words to replace it: “The Applicant.....must explain how the costs of delivering the decommissioning plan will be met.” The Secretary of State would be grateful for comments from the Welsh Government, Gwynedd Council, Natural Resources Wales and others with an interest on whether the Applicant’s wording is suitable for inclusion in any development consent order that he might make.</p> <p><i>“Decommissioning plan [Paragraphs 7 – 9 below (in a different format) were circulated as part of the Secretary of State’s letter of 21 December 2016]</i></p> <p><i>20.—(1) Where any of the conditions listed in (2) are met, the Applicant must submit to the relevant planning authority for approval written details of a decommissioning plan for the authorised development, together with such environmental information as may be required or reasonably requested by Gwynedd Council.</i></p> <p><i>(2) The conditions in (1) are:</i></p> <ul style="list-style-type: none"> <i>(a) the authorised project is abandoned, or is to be abandoned;</i> <i>(b) generation of electricity permanently ceases; or</i> <i>(c) 124 years are reached from the date upon which the authorised development commences generation.</i> <p><i>(3) the undertaker must notify Gwynedd Council in writing of—</i></p> <ul style="list-style-type: none"> <i>(a) the date of commencement of generation on the authorised development;</i> <i>(b) if relevant, the date on which the authorised development is abandoned or is to be abandoned;</i> <i>(c) if relevant, the date upon which use of the authorised development has permanently ceased within 5 working days of the occurrence of each event.</i> <p><i>(4) The decommissioning plan is to include a timetable for its implementation.</i></p> <p><i>(5) Gwynedd Council is to consult Natural Resources Wales on the contents of the proposed decommissioning plan.</i></p> <p><i>(6) The Applicant must implement the decommissioning plan approved by the Gwynedd Council.</i></p> <p><i>(7) The Applicant must submit to Gwynedd Council an outline decommissioning plan for approval by Gwynedd Council before construction of the works listed in</i></p> <p>decommissioning plan.</p> <p>The Applicant requests that the period in (11)(a)(ii) is increased from 6 to 12 months. To conclude that a project is abandoned is a major step. Whilst a construction project would normally not have a 6 month gap, it is too short for a major project of this kind for a gap of that length to trigger an abandonment provision, if there were, for example, unexpected funding or other commercial issues.</p> <p>The Applicant considers that seeking to define “to be abandoned” as proposed is not appropriate. The drafting in (11)(c) is not clear in any event. Obliging the undertaker to notify the Council of proposed abandonment is sufficient. The word can simply be given its natural meaning. The undertaker will not do this lightly. There is ample protection in the other provisions in the Article to cover what verifiably takes place, without having to seek to define future intentions or states of affairs.</p> <p>The Applicant is disappointed that the question does seek the consultees’ views on an appropriate timescale for review of such plans given the Applicant’s submission that five yearly updates represents an unnecessary administrative burden on the local planning authority and their consultees including NRW as well as the Applicant. 20 years would be more appropriate.</p> <p>The Applicant appreciates that the Secretary of State has taken note of the comments made on the securing of decommissioning funds but wishes to take this opportunity to emphasise that this would represent an unreasonable financial burden on the project given the anticipated lifespan of 125 years, and the long established protections under the Reservoirs Act. The approach to this question needs to be proportionate to the risk and the wider issues and legal protections already in place.</p>

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		<p><i>Part 1 of Schedule 1 to this Order can be commenced and must:</i></p> <ul style="list-style-type: none"> <i>(a) identify the nature of the decommissioning works to be undertaken;</i> <i>(b) include the anticipated timetable for implementation of decommissioning; and</i> <i>(c) demonstrate how the funding for decommissioning is secured.</i> <p><i>(8) An updated outline decommissioning plan must be submitted for approval by Gwynedd Council every 5 years from the date of commencement of construction of the works listed in Part 1 of Schedule 1 to this Order until the decommissioning plan is submitted under paragraph (1).</i></p> <p><i>(9) The decommissioning plan submitted under paragraph (1) must be substantially in accordance with the latest outline decommissioning plan approved by Gwynedd County Council.</i></p> <p><i>(10) The Applicant must implement the decommissioning plan, unless otherwise agreed with Gwynedd Council.</i></p> <p><i>(11) For the purposes of this Requirement –</i></p> <ul style="list-style-type: none"> <i>(a) generation is to be taken to have permanently ceased where –</i> <ul style="list-style-type: none"> <i>(i) no electricity is generated for a continuous period of 12 months unless works to repair, refurbish or maintain any part of the authorised development are ongoing, or</i> <i>(ii) following the commencement of generation, the authorised development is unoccupied by the undertaker for a continuous period of 6 months; and</i> <i>(b) the authorised project is to be taken as “abandoned” where, prior to the commencement of generation, construction work on the project ceases for a period of 6 months; and</i> <i>(c) the authorised project is to be taken as “to be abandoned” where, prior to the commencement of generation, the Applicant known that construction work, having been commenced, will not take place on the project ceases in the next calendar year.”</i>
3.	Ongoing maintenance: major works	
3.1	All concerned, including Welsh Government, Applicant,	<p>The Secretary of State, mindful of the length of time for which development consent is being sought and the potential need to renew major components such as turbines, asks whether there would be particular merit in including provision on plans for such major maintenance as already proposed for the initial</p> <p>The Applicant recognises the potential that major maintenance works associated with the project may be possible during the operational lifetime of the project, and agrees that an annual maintenance plan detailing any works not considered routine or minor could be supplied to Gwynedd Council and</p>

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	<p>Gwynedd Council and Natural Resources Wales in particular</p>	<p>construction of the Development (such as for construction traffic management).</p> <p><i>“Annual maintenance plans</i></p> <p><i>[(1) The Applicant must, on completion of construction and annually thereafter until the implementation of the “decommissioning plan” as approved under Requirement [], submit to Gwynedd Council a plan detailing the maintenance works which the Applicant intends to carry out in the next 12 months.</i></p> <p><i>(2) The Applicant must notify Gwynedd Council of the completion of construction within 5 working days of its occurrence.</i></p> <p><i>(3) The Applicant and Gwynedd Council may agree works to be included on a list of works considered routine maintenance or minor works, and not required to be included within any annual maintenance plan, until Gwynedd Council notifies the Applicant otherwise.</i></p> <p><i>(4) The Applicant must include in the annual maintenance plan submitted any works agreed with or required by any engineer inspecting or supervising the authorised development under the Reservoirs Act 1975.</i></p> <p><i>(5) Gwynedd Council, having consulted any person they consider to be appropriate, may, within 28 days of receipt of the annual maintenance plan, advise whether they consider that any of the works proposed to exceed what is acceptable as maintenance of the authorised development. In making the determination of what will constitute maintenance, Gwynedd Council must have regard to the activities assessed in the environmental statement. Works are not acceptable as being maintenance works where they would have materially new or materially different effects to those assessed in the environmental statement. Where Gwynedd Council does not advise that any work is unacceptable within 28 days of receipt of the annual maintenance plan, they will be deemed to have approved that plan.</i></p> <p><i>(6) Gwynedd Council may, where they consider works included in the annual maintenance plan to constitute major works such as the replacement of turbines or otherwise due to the scale and potential effect on the environment or the local population, require the annual maintenance plan to include the following:</i></p> <p style="padding-left: 40px;"><i>(a) a Code of Maintenance Construction Practice (including, where appropriate, such plans as are required for the construction of the authorised development under Requirement 6(2)); and</i></p> <p style="padding-left: 40px;"><i>(b) limitations on maintenance construction hours (similarly to Requirement 13 for the construction of the authorised development).</i></p>

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		<p>(7) Before including a Plan under (6)(a) in any annual maintenance plan, Gwynedd Council must consult Natural Resources Wales.</p> <p>(8) Where some of the works are not agreed to be maintenance the relevant planning authority may approve the plan in part by specifying the activities which are not approved.</p> <p>(9) The Applicant must notify the relevant planning authority of any material change to the annual maintenance plan during the 12 month period. The provisions of paragraphs (5) to (8) apply to such notification as if it were a submission of the plan.</p> <p>(10) Any works included in an annual maintenance plan must be carried out by the Applicant in accordance with that plan unless otherwise agreed with Gwynedd Council or (11) applies.</p> <p>(11) Nothing in this requirement prevents the Applicant carrying out at any time any works in an emergency or which are required to ensure the structural stability of the dams or reservoirs or to protect life or property.”</p>
4.	Additional clauses to reflect existing planning permission for Glyn Rhonwy pumped storage facility	
4.1	Applicant and Gwynedd Council	<p>In the event that the Secretary of State decides to make an Order for the Development, the Secretary of State would welcome the views of the Applicant and Gwynedd Council on the inclusion of provisions covering the following matters which were included in the planning permission granted on 19 February 2014 by Gwynedd Council for a 49.9MW pumped storage facility at Glyn Rhonwy:</p> <ul style="list-style-type: none"> • Condition 53 of the Planning Permission states that only mineral waste derived from tunnelling and excavation operations hereby permitted shall be deposited within the new slate tip. No refuse materials of any description from within or outside the site shall be deposited therein. • Condition 56 requires that no plant or vehicles shall cross any area of unstripped ground except where such trafficking is essential and unavoidable for the purposes of undertaking permitted operations. Essential trafficking route shall be marked in such a manner as to give effect to this condition. No part of the site shall be excavated, traversed or used for the stationing of plant machinery or storage of soils, overburden or mineral waste, until all available vegetation, <p>The applicant considers that the conditions associated with the existing T&CPA permission have been adequately covered during the DCO examination process and various draft requirement plans. These are shown in Table 1.1 of the CoCP (rev5) (SPH_GREX_DCOD2_03) which outlines the following:</p> <ul style="list-style-type: none"> • Condition 53 – Excess Slate Mound Materials - will be addressed in the Materials Management Plan (MMP) and Waste Management Plan (MWP) in section 4. • Condition 56 – Topsoil Stripping to be addressed in section 2.5 of the CoCP. • Condition 57 – Storage of Dry Stone Wall Materials - will be addressed in the Reinstatement and Landscape Plan, section 4.3 of the CoCP.

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		<p>topsoil and subsoil has been stripped and stored separately'.</p> <ul style="list-style-type: none"> Condition 57 requires that 'All materials derived from the removal of existing dry-stone walling and field boundaries shall be stored in areas set aside for that purpose which shall have been agreed beforehand in writing with the LPA. All such materials shall be employed in works of restoration to re-build dry stone walls and none shall be removed from the site without the prior written permission of the relevant local planning authority.