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Dear Mr Holmes

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE GLYN RHONWY PUMPED STORAGE GENERATING STATION AT LLANBERIS, NORTH WALES

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to:

- the Report dated 8 December 2016 of the Examining Authority, Stuart Cowperthwaite (“the ExA”), who conducted an examination into the application (“the Application”) dated 21 October 2015 by Snowdonia Pumped Hydro Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the Act”) for the Glyn Rhonwy Pumped Storage Generating Station (“the Development”);
- representations received by the Secretary of State in respect of the application; and
- further consultation engaged in by the Secretary of State in respect of issues raised in the planning process and by the draft Order as submitted to the Secretary of State.

1.2 The examination of the Application began on 8 March 2016 and was completed on 8 September 2016. A number of hearings to consider aspects of the Application were held during the examination. The ExA also undertook a number of unaccompanied site inspections.

- 1.3 The Order as applied for would grant development consent for the construction and operation of a 99.9MW pumped storage scheme at the Glyn Rhonwy and Chwarel Fawr quarries.
- 1.4 The Development, as applied for, would comprise the following principal elements:
- One head pond situated in the disused Chwarel Fawr quarry with a new dam, access shaft and spillway infrastructure to the Nant y Betws stream;
 - One tailpond to be situated in the disused Glyn Rhonwy quarry with a new dam, access shaft and spillway to Llyn Padarn;
 - A pumping station at Llyn Padarn;
 - A power house at the Glyn Rhonwy Industrial Estate to the south of the Glyn Rhonwy quarry with ancillary buildings and equipment consisting of up to two underground turbines and pumps approximately 70 metres underground;
 - A penstock connecting the reservoir in the Chwarel Fawr quarry to the power house; and
 - A tail race connecting the power house to the reservoir in the Glyn Rhonwy Quarry.
- 1.5 Published alongside this letter on the Planning Inspectorate's web-site is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in chapters 4, and 6 of the ExA's Report and the Summary of Conclusions and Recommendations is in chapter 9.
- 1.6 The Secretary of State's officials conducted a Habitats Regulations Assessment of the Development. In light of that Assessment, the Secretary of State considers that there will be no likely significant effect on the integrity of any European site as defined in the Conservation of Habitats and Species Regulation 2010 and that no Appropriate Assessment of the impacts of the Development is, therefore, required.

2. Summary of the ExA's Report and Recommendation

- 2.1 The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:
- a) need
 - b) water, contaminated land and waste;
 - c) biodiversity, ecology and geological conservation;

- d) traffic and transportation;
- e) noise and vibration;
- f) air quality
- g) other health impacts, safety and security;
- h) common law nuisance and statutory nuisance;
- i) socio-economics, land use and accessibility;
- j) historic environment;
- k) good design, landscape and visual impacts;
- l) decommissioning; and
- m) compulsory acquisition.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the ExA's Report, the ExA recommends [ER 9.0.6] that the Secretary of State should make the Order set out in Appendix A to the Report. (All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report (specified in the form, ER X.XX.XX).)

3. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter, the ExA's Report and the Order constitute both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Act and the notice and statement required by regulations 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

4. The Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA's Report, the representations and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs.

4.2 In making the decision, the Secretary of State has had regard to the Overarching National Policy Statement for Energy (EN-1), the Local Impact Report submitted by Gwynedd Council and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendation.

Need for the Proposed Development

- 4.4 The Secretary of State notes that, while the application is a 'Nationally Significant Infrastructure Project' as defined in sections 14 and 15 of the Planning Act 2008 by virtue of being an onshore generating station with a generating capacity of greater than 50MW, there is no National Policy Statement which explicitly covers pumped storage projects such as Glyn Rhonwy. However, the Overarching National Policy Statement for Energy (EN-1) does consider that the storage of energy will, in general terms, play an important role in the United Kingdom's energy mix. This position is reinforced in the Call for Evidence, 'A Smart, Flexible Energy System' issued by BEIS and OFGEM in November 2016.
- 4.5 The Secretary of State also notes that the ExA [ER 6.3.2. and 6.3.3] considered that the Development would: (i) help to meet the urgent need for new electricity generation, particularly at times of peak demand; (ii) be an important part of a low carbon energy system that compensates for the intermittency of renewable generation and facilitate renewable energy development; and (iii) support Gwynedd Council's objective of redeveloping the Glyn Rhonwy Strategic Development Site. The Secretary of State considers that the project would deliver repeatable and reliable on demand energy over the potentially considerable lifetime of the project (124 years from the date of commencing generation).
- 4.6 During examination and after, representations were made raising concerns that the storage need potentially met by Glyn Rhonwy could be met by alternatives, such as batteries. The Secretary of State does not consider this a necessary consideration for this application; no clear and demonstrably better alternative that required consideration was put to the Secretary of State.

5. Consideration of the ExA's Conclusions and Recommendations

- 5.1 The Secretary of State considers that most of the matters assessed in the ExA's Report require no further consideration as the conclusions reached are reasonable and justifiable on the basis of the matters considered by the ExA. The Secretary of State, therefore, adopts the conclusions of the ExA except where stated otherwise. However, since the closure of the examination, matters have been raised which are important and relevant considerations for the Secretary of State's decision.
- (i) Ordnance in Glyn Rhonwy Quarries (Water Environment, Contaminated Land and Waste)

- 5.2 There were particular concerns raised by Interested Parties to the examination of the application in relation to potential impacts resulting from the disturbance of any ordnance that remained in the Glyn Rhonwy quarry system after being stored and decommissioned there over a period of time. The site had housed a wide variety of ordnance (the Ministry of Defence had removed a large quantity of munitions from the site in the 1970s) – with the possibility that chemical and nerve agents had formed part of the inventory of munitions there. The concerns raised were that the Applicant had not properly assessed the potential for munitions to still be present on the site of the Development and that any disturbance of munitions still on site during the construction of the Development could contaminate local water courses and ultimately Llyn Padarn and beyond.
- 5.3 In assessing the merits of these concerns and the Applicant's evidence base, the ExA considered the considerable quantity of material provided by the Applicant and Interested Parties, including Natural Resources Wales and Gwynedd Council. The ExA concluded [ER 4.3.210] that, while it was clear that unknown ordnance was likely to be present in the Development area, there was no evidence that biological or radiological contamination was present. The ExA also concluded [ER 4.3.214] that provided suitable mitigation was in place, then the potential impacts arising from the disturbance of munitions would be adequately addressed. Mitigation would be provided by way of an Outline Ordnance Management Plan which would have to be agreed and approved by Gwynedd Council and an Environmental Permit for discharges from the Glyn Rhonwy quarry to Llyn Padarn which was the subject of an application to Natural Resources Wales.
- 5.4 Late representations submitted to the Secretary of State on 16 February 2017 from Interested Parties to the Examination (with an Addendum submitted on 17 February 2017) raised fresh concerns about the potential dangers of disturbing munitions. However, the Secretary of State agrees with the ExA that suitable mitigation will be put in place to ensure that, in the event any munitions are discovered then appropriate measures will be put in place to deal with them. (The Secretary of State notes that Natural Resources Wales issued environmental permits to allow the `de-watering` of two quarries that form part of the Development in January 2017 and the discharge of the drained water to Llyn Padarn and the Nant-y-Betws watercourse.)
- 5.5 A further late representation dated 2 February 2017 raised queries as to whether Natural Resources Wales had discharged its functions as a statutory consultee correctly. The Secretary of State, having reviewed this matter, finds no reason to consider that advice received from Natural Resources Wales in its role as a statutory consultee in respect of the Application cannot be relied upon for the purposes of decision-making on the Application.

(ii) Biodiversity, Ecology and Geological Conservation

- 5.6 While the ExA concluded that, in general terms, the impacts of the Development were acceptable after suitable mitigation had been put in place, it did conclude that there would be significant adverse effects on a local population of tree-roosting bats in its vicinity and that this should weigh against granting consent for the Application. In addition, there were potential impacts on water plantain in the vicinity of the spillway infrastructure in Llyn Padarn. The ExA noted that following pre-commencement surveys – which were made a requirement of the Order recommended to the Secretary of State – and detailed design, further European Protected Species (“EPS”) licences may be required for tree-roosting bats and water plantain.
- 5.7 Following consideration of the three tests for EPS licences, the ExA concluded that it was not aware of any reason why those tests would not be passed and why the EPS licences would not be granted, if required. The ExA concludes that, on balance, the need for the Development outweighs any potential impacts on bats and water plantain in this particular case. The Secretary of State agrees with this conclusion.

(iii) Traffic and Transportation

- 5.8 Concerns were raised about the potential impact of construction traffic on the local transport infrastructure as well on local residents and on properties (from noise and vibration). The ExA notes that one of the existing roads is very narrow and that there is, therefore, the potential for conflict between construction traffic and other road users. However, the ExA also notes that the Applicant and Gwynedd Council were considering an agreement to put in place highway improvement measures which would mitigate some of the impacts. Nevertheless, the ExA considered that, in view of the concerns raised by local people, it would be appropriate to include a condition in the Order it recommended to the Secretary of State to limit the movement of HGVs on access routes during the construction of the Development in line with the levels assessed in the application – noting that such a condition had not been discussed with the Applicant.
- 5.9 In light of the ExA’s comments and its suggested additional requirement, the Secretary of State consulted with the Applicant and other interested parties. The Applicant’s response was that it considered a limit on HGV movements was unnecessary as the need to implement a Construction Traffic Management Plan (which would have to be agreed with Gwynedd Council) already provided suitable mechanisms for controlling HGV movements. Gwynedd Council’s Transportation Unit had no objection to the Secretary of State’s proposed addition to the Order.
- 5.10 In light of the arguments put forward by the ExA and interested parties, the Secretary of State considers that the inclusion of the provision as drafted by the ExA would be an appropriate measure to mitigate the potential impacts of the Development on residents and other road users.

(iv) Noise and Vibration

- 5.11 There was a great deal of local concern about the impact of construction activities – noise and vibration impacts from surface plant, blasting, tunnelling, construction traffic and the storage and disposal of unexploded ordnance – on people and buildings and general amenity in the vicinity of the works. Impacts from the operation of the plant would come from noise and vibration from the underground turbines, generators, transformers, switchgear, the workshop and the pumping station.
- 5.12 The Applicant assessed that, during the construction of the Development, the noise and vibration impacts would be largely localised temporary minor adverse, with the exception of eight representative locations where effects due to surface plant noise were considered to be localised temporary major adverse and three representative locations where they would be localised temporary moderate adverse.
- 5.13 The ExA considered that it was not possible for the Applicant to provide detailed assessments of the impacts of certain construction activities at this stage of the process before detailed design considerations had been finalised. The ExA considered that the proper mechanism for the detailed assessment to be approved by Gwynedd Council was the Operational Noise Management Plan. The need for such a plan was set out in a Requirement in the Order recommended by the ExA.
- 5.14 One key issue in the ExA's Report is an assessment of the Applicant's request that tunnelling of the penstock could be undertaken from either end of the penstock although the Applicant envisaged that it would only take place from the Glyn Rhonwy end up to the Chwarel Fawr end. The ExA notes that tunnelling from the Chwarel Fawr end of the penstock would involve a number of construction activities that had not been assessed in the Applicant's Environmental Statement. The ExA identified noise, vibration, air overpressure and other (unspecified) impacts as being lacking from the Applicant's assessment of impacts.
- 5.15 In concluding his assessment, the ExA found that, in order for him to be satisfied and have confidence that the potential impacts of the Development "as assessed, consulted on and examined are not exceeded" [ER 4.6.87], the tunnelling of the penstock should be required to be undertaken in one direction only from the Glyn Rhonwy end towards Chwarel Fawr. The ExA, therefore, included in the Order recommended to the Secretary of State a provision requiring tunnelling of the penstock to take place from the Glyn Rhonwy end only. The ExA stated that the proposed requirement had not been exposed to or agreed with the Applicant.
- 5.16 The Secretary of State, therefore, wrote to the Applicant and other interested parties after receipt of the ExA's Report to seek views on the inclusion of the provision in any Order that the Secretary of State might make. The Applicant stated in its response that the inclusion of the provision was "fundamentally unacceptable" as it would limit the ability of the principal contractor for the project to determine the most appropriate construction methods and programme. However, another respondent –

a local resident – stated that it was imperative that drilling should take place from one direction only (from Glyn Rhonwy) to avoid significant impacts on residents living near the Chwarel Fawr quarry.

5.17 The Secretary of State considers that in the absence of any assessment of the bi-directional approach to tunnelling in the Applicant's documentation or during the examination of the Application, it is necessary to impose a restriction on tunnelling activity so that it can take place from the Glyn Rhonwy end of the penstock only. The Secretary of State has included the relevant provision at Requirement 6(5) of the Order.

(v) Common law nuisance and statutory nuisance

5.18 The ExA generally found that the Applicant's proposals on statutory nuisance were suitable for the Development. However, the ExA recommended that, in the absence of a compelling case from the Applicant, the Applicant's proposed limiting of the number of activities that were not subject to protection under the statutory nuisance provisions were not justified and made amendments to the Applicant's suggested Order to reflect its view. The ExA stated that such amendments had not been agreed with the Applicant during the examination of the Application.

5.19 The Secretary of State, therefore, sought comments from the Applicant and other interested parties on the ExA's suggested changes. The Applicant responded by stating that it did not agree with the proposed changes. Gwynedd Council indicated it had no objection to the proposed changes.

5.20 In the light of the responses on this matter, the Secretary of State considers that the case is made for incorporating the ExA's amendments into the Order.

(vi) Socio-economics, land use and accessibility

5.21 The ExA concluded [ER 6.4.53] that, subject to the Applicant being able to demonstrate that mitigation access land had been secured appropriately, significant effects relating to local and regional socio-economics, land use and accessibility would be unlikely to occur. The Secretary of State consulted the Applicant on this matter. The Applicant confirmed that it had secured the necessary land rights for access land but stated that it would designate the land only after the relevant commons consent had been granted by Welsh Ministers. The Secretary of State is content that this matter does not weigh against the Order being made.

(vii) The historic environment

5.22 The ExA found that the Development would have significant adverse effects on a number of heritage assets, including two of national significance – the Glyn Rhonwy Quarry and its bomb store and the

Chwarel Fawr Quarry. The loss of the heritage assets would conflict with a number of Welsh planning policies. The ExA, therefore, recommended to the Secretary of State that any Order he might make should be augmented by the inclusion of additional mitigation in the form of a new Requirement. However, the ExA was not able to seek the Applicant's views on the matter during the examination of the Application.

5.23 The Secretary of State, therefore, sought comments on the proposed new Requirement from the Applicant, Gwynedd Council, the Welsh Government and the Gwynedd Archaeological Planning Service. In their responses, the Applicant, Gwynedd Council, the Welsh Government and the Gwynedd Archaeological Planning Service indicated they were content with the proposed new condition, although the Council and the Welsh Government suggested some alternative wording to broaden the scope of any archaeological mitigation and the opportunities for public engagement in relation to the bomb store and other appropriate historic assets. The Applicant also pointed out that the bomb store which was the subject of one of the provisions in the condition, was outside the limits of the Development as defined in the Order, was not within the area of land it owned in respect of the Development and was not considered to be the subject of any impacts from the Development.

5.24 In the light of the comments received, the Secretary of State has decided to include relevant provisions in the Order as recommended by the ExA. The Secretary of State also considers that the significant impacts on historic assets assessed by the ExA are acceptable when set against the need for the Development.

(viii) Decommissioning

5.25 The ExA indicated that it had added provisions to the order recommended to the Secretary of State in order to address concerns raised by Interested Parties, including the Welsh Government, about funding for decommissioning. The ExA's wording provided for an Outline Decommissioning Plan to be submitted before the commencement of generation and updated every twenty years afterwards – the Outline Decommissioning Plan would have to be approved by the relevant planning authority (Gwynedd Council) and would need to include the anticipated timetable for decommissioning and demonstrate how funding was to be secured. The Final Decommissioning Plan would have to be substantially in accordance with the Outline Decommissioning Plan.

5.26 The ExA's proposed changes had not been discussed with the Applicant or other interested parties and the Secretary of State, therefore, consulted after the receipt of the ExA's Report.

5.27 In addition, the Secretary of State wished to take views of interested parties, including the Applicant, on whether it was considered that there was a need for provisions to be included in any Order the Secretary of State might make to mitigate the possibility of a partially completed

Development being abandoned during construction and removal or making safe costs falling to the local Council or the taxpayer more generally in the event that the Applicant was declared insolvent or chose to abandon the project for some other reason. The Secretary of State, therefore, sought views on the inclusion of suitable provisions to address this particular point.

- 5.28 In response, the Applicant set out that decommissioning of the two quarries that will form the Development would be undertaken under the provisions of the Reservoirs Act 1975 and that the introduction of any requirement for the submission of outline decommissioning plans every five years would be a disproportionate burden on the Applicant and on the local council which would have to consider it. In addition, the Applicant did not consider that the need to demonstrate how decommissioning funds were to be secured was reasonable and that, given the operational life of the project – 124 years from first generation – which would represent an unreasonable financial burden for the Applicant.
- 5.29 In response to the consultation about early abandonment of the Development before generation took place, the Applicant indicated that there were relevant provisions in the Reservoirs Act that would provide comfort. The Applicant also indicated that it felt that the timings of some of the requirements that were being proposed were too short and that longer periods of time should be permitted.
- 5.30 The Secretary of State has considered the points made in response to the consultation but considers that the nature of the project and the potential impacts of a badly considered decommissioning proposal merit taking a robust approach to make sure that the risks of project failure are mitigated as much as possible. He has, therefore, included a provision in the Order to require the Undertaker to submit an outline decommissioning plan to Gwynedd Council for approval before commencement of the authorised development. The outline decommissioning plan must demonstrate how the funding for decommissioning is secured. The Secretary of State has also included provisions that require updated outline decommissioning plans to be submitted to the relevant local planning authority every twenty years and which specify the Development would be deemed to be abandoned if work on the project ceases for a period of 12 months. The requirements for a decommissioning plan are secured in requirement 20.

Other Issues Subject of Consultation

(i) Crown Interests

- 5.31 The Applicant sought the grant of compulsory acquisition powers over two plots of land in which the Ministry of Defence is named as having an interest. The Ministry of Defence had not indicated during the examination whether it had granted consent for the acquisition. The Secretary of State, therefore, sought the Ministry of Defence's indication of whether it had now granted the requisite consent. The Ministry of

Defence did not respond to the consultation but the Applicant did, stating that it would not seek the compulsory acquisition of the plots of land in question and asking the Secretary of State to remove the relevant provisions from the draft Order. The Secretary of State has, therefore, made the necessary amendments to the Order.

(ii) Protective Provisions

5.32 The ExA noted that no final agreement on protective provisions to be put in place in respect of statutory undertakers had been agreed with SP Manweb although no impediment had been identified during the examination of the Application to indicate that an agreement would not be forthcoming. The Secretary of State, therefore, sought confirmation from the Applicant that such an agreement had been reached which was duly received. The Secretary of State considers this matter has been satisfactorily closed out.

(iii) Other Legal Agreements

5.33 The ExA indicated in its Report that applications had been made by the Applicant to Gwynedd Council for agreement under section 278 of the Highways Act 1980 for highway improvements to be made to a local road and to Natural Resources Wales in respect of an Environmental Permit to be issued in respect of the discharge of water from the Chwarel Fawr quarry into the Nant-y-Betws surface water body. The Secretary of State, therefore, consulted with the Applicant, Gwynedd Council and Natural Resources Wales.

5.34 In respect of the Highways Act agreement, both the Applicant and the Council indicated that no decision had yet been taken but there were no reasons why agreement should not be reached before the Secretary of State took his decision. In respect of the Environmental Permits, both the Applicant and Natural Resources Wales stated that the necessary permits had been issued and that they included conditions which set out monitoring requirements and emission limits and require certain things being implemented before any discharge can take place.

(iv) Ongoing Maintenance – Major Works

5.35 The Secretary of State having considered the ExA's Report and various consultation responses considered whether, given the length of time for which development consent is being sought by the Applicant and the potential need to renew major components such as turbines, any Order he might issue for the Development should include provision for the mechanisms that will apply in cases of major maintenance. The Secretary of State, therefore, sought views from the Applicant and other Interested Parties on the inclusion of specific wording in any Order that might be made. The proposed wording would give Gwynedd Council powers to require the Applicant to include in any annual maintenance plan, a Code of Maintenance Construction Practice and details of limitations on maintenance construction hours.

5.36 In response, the Applicant agreed on the need for annual maintenance plans to be provided to Gwynedd Council. It also pointed out that any provisions in the Order must not conflict with the workings of the Reservoirs Act which would also need to be complied with. The Applicant further felt that defining the composition of annual maintenance plans without due consideration of the actual work required to be carried out at the time, may place unnecessary burdens on the Applicant, Gwynedd Council and Natural Resources Wales. Finally, the Applicant set out that it considered it would be better if Gwynedd Council and Natural Resources Wales could decide what information or documentation they needed to receive in order to confirm the acceptability of any required maintenance works. Gwynedd Council took a similar view to the Applicant.

5.37 Having considered the consultation responses received, including concerns expressed about the construction impacts of the project, and the length of the consent granted (potentially 124 years from first electricity generation), the Secretary of State considers that where maintenance could include significant components of the project being replaced, then the powers available to Gwynedd Council in protecting those persons potentially affected should be clearly expressed in any Order that is made. Consequently, the Order has clarified what an annual maintenance plan may contain, but leaves the final decision on what to include to Gwynedd Council. The position is set out in requirement 19.

(v) Additional Clauses to Reflect Existing Planning Permission

5.38 The Secretary of State noted that a number of conditions in the planning permission issued by Gwynedd Council in respect of a Glyn Rhonwy development with a generating capacity of 49.9MW could usefully be included in any Order issued by the Secretary of State but had not featured in the version of the Order submitted to the Secretary of State by the ExA. These conditions set out that: (i) only mineral waste derived from activities permitted by any Order issued by the Secretary of State could be deposited within any new slate tips, (ii) no plant or vehicles should cross areas of unstripped ground and (iii) all materials derived from the removal of existing dry-stone walling and field boundaries are to be stored in special areas to be agreed with Gwynedd Council. All such materials are to be employed in restoration works and must not be removed from the site without prior permission.

5.39 Having considered the terms of the Order and its associated plans further, the Secretary of State considers that the matters are not covered fully in the proposed Order, and has, therefore, amended the Order to include the provisions currently included in the existing planning permission. These are contained in requirements 22 to 24.

Human Rights Act 1998

5.40 The Secretary of State has considered the potential infringement of convention rights by the authorised development.

- 5.41 The Secretary of State has considered the effect the authorised development may have on the rights of individuals and businesses. In particular, the Secretary of State has considered the potential interference with the rights protected under Article 1 of Protocol of the European Convention on Human Rights.
- 5.42 The Secretary of State notes that the ExA had regard to the impact of the development on the properties and businesses in close proximity to it.
- 5.43 The Secretary of State had considered the rights protected and has reached the conclusion that any interference is necessary given the importance in the national interest of the Development proposed and that the interference authorised by the Order is proportionate, as not going further than the Secretary of State considers necessary to achieve delivery of the Development.

6. Other Matters

Transboundary Impacts

- 6.1 The Secretary of State for Communities and Local Government (“SoSCLG”) undertook a screening exercise for transboundary impacts for the purposes of regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 twice; first on 11 May 2015 following the Applicant’s request for a Scoping Opinion, and then again on 8 January 2016 following the Planning Inspectorate’s acceptance of the Application documents. The Secretary of State for Communities and Local Government applied the precautionary approach set out in the Planning Inspectorate’s “Advice Note 12: Transboundary Impacts Consultation” and took the view that the Development was not likely to have a significant effect on the environment of another EEA state. The Secretary of State agrees with that conclusion.

Equality Act 2010

- 6.2 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships¹; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that the decision to grant consent would have significant differential impacts on any of the protected characteristics.

Section 6(1) of the Environment (Wales) Act 2016

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

6.3 The Secretary of State has had regard to the duty in section 6(1) of the Act to seek to maintain and enhance biodiversity. In particular, in accordance with section 6(4)(a), the Secretary of State has had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State is of the view that the ExA's Report has considered biodiversity in accordance with this duty.

7. The Secretary of State's Conclusion and Decision

7.1 For the reasons set out in this letter, the Secretary of State accepts that the ExA's consideration of the issues raised during the examination of the Application is robust and well-reasoned. Further, the Secretary of State is of the view that the need case for the Development has been demonstrated and, while accepting that there will be adverse impacts from the Development, considers that the overall benefits are such that he has decided to grant development consent.

8. Modifications to the Order

8.1 In considering the draft Order submitted with the ExA's Report, the Secretary of State has decided to make modifications to the recommended Order. The principal modifications, and the reasons for them, are set out below:

(i) Article 4 (Procedure in relation to approvals etc. under requirements)

Paragraph (1) removed as unnecessary, other legal provisions achieve the objective; paragraph (3) moved to Schedule 7.

(ii) Article 9 (Defence to proceedings in respect of statutory nuisance)

Modified to remove a number of exemptions for defences against charges of public nuisance.

(iii) former (as recommended by ExA) Articles 19 to 24 and Schedule 6 (compulsory purchase)

Removed to reflect that powers of compulsory purchase are no longer being sought.

(iv) Schedule 1 Part 1 (authorised development)

Modified to redefine the limit on generating capacity to specify that this relates to installed generating capacity (rather than an "output capacity").

(v) Schedule 1 Part 1 (authorised development)

Modified to limit the scope of any further development or ancillary works to those which are within the ambit of a generating station as defined in the Planning Act 2008.

(vi) Requirement 3 (Export limit)

Modified by a change of title (to “Generating Limit”) and a re-calibration of how much installed generating capacity is permitted.

(vii) Requirement 5 (Detailed design)

Modified to include a reference to the reservoirs at the Chwarel Fawr and Glyn Rhonwy quarries (Q1 and Q6 respectively) and set maximum limits for their capacities.

Former paragraph 5(2) removed as it conflicted with the regime for non-material changes in Schedule 6 to the Planning Act 2008.

(viii) Requirement 6 (Code of Construction Practice)

Modified by the addition of provisions to:

- (a) Secure that underground excavation of the penstock is to be in one direction only – from the Glyn Rhonwy quarry to the Chwarel Fawr quarry;
- (b) Secure limits on the movements of heavy goods vehicles on access routes during construction of the Development; and
- (c) Secure pre-commencement surveys for water plantain and tree-roosting bats.

(ix) Requirement 19 (Annual maintenance plan)

Modified to require that where the relevant local planning authority considers that works in the annual maintenance plan constitute `major works`, then the annual maintenance plan must include a Code of Construction Practice and limitations on maintenance construction hours.

(x) Requirement 20 (Decommissioning plan)

Modified by the addition of provisions to:

- (a) Require the submission of an outline decommissioning plan before the commencement of generation which must (i) identify the nature of the decommissioning works, (ii) include a timetable for decommissioning and (iii) demonstrate how funding for the decommissioning is secured;
- (b) Require that an updated outline decommissioning plan must be submitted for the approval of the relevant local planning authority every 20 years until the final decommissioning plan is submitted;

(c) Require that the latest decommissioning plan must substantially be in accordance with the last outline plan approved by the local planning authority; and

(d) Cater for the possibility of the Development being abandoned during its construction.

(xi) Requirement 21 (Archaeological compensation and enhancement strategy)

The requirement is added to secure mitigation measures that are needed so that the impacts of the Development are in compliance with the contents of Planning Policy Wales 9 issued by the Welsh Government.

(xii) Requirement 22 (Authorised development commissioning: onsite emergency flood plan)

The requirement is added to ensure that the potential risks and their mitigation for the Development as a whole (including the interconnection between the Chwarel Fawr and Glyn Rhonwy reservoirs) are 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.

(xiii) Requirements 23-25

Inserted to reflect protections and provisions in existing planning permission issued by Gwynedd Council for the Glyn Rhonwy site.

(xiv) Requirement 26

This requirement was amended to allow for the alteration of details, plans or schemes submitted for approval under other requirements, and also to ensure that such amended plans do not give rise to any materially new or materially different significant effects to those assessed in the environment statement

9. Challenge to decision

9.1 The circumstances under which the Secretary of State's decision may be challenged are set out in the note in the Annex to this letter.

10. Publicity for Decision

10.1 The Secretary of State's decision, on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours sincerely

Giles Scott

GILES SCOTT

Head of Energy Infrastructure Planning and Coal Liabilities

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, the refusal of an application for an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published on the Planning Inspectorate's website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/wales/glyn-rhonwy-pumped-storage/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).