



# Awel y Môr Offshore Wind Farm

## Written Summary of Oral Submissions to the CAH (Compulsory Acquisition Hearing)

### Deadline 8

**Date: 15 March 2023**

**Revision: A**

Document Reference: 8.6

Application Reference: N/A



REVISION	DATE	STATUS/ REASON FOR ISSUE	AUTHOR	CHECKED BY	APPROVED BY
A	March 2023	Deadline 8	Burges Salmon	RWE	RWE



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# Awel y Môr Compulsory Acquisition Hearing: The Applicant's Summary of Oral Submissions



This note summarises the submissions made by Awel y Môr Offshore Wind Farm Limited (the Applicant) at the Compulsory Acquisition Hearing (“CAH”) on 28 February 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

Updates or responses to action points are addressed in the response to CAH actions document submitted at Deadline 7 (REP7-005).

## 1 The Applicant’s case for Compulsory Acquisition and Temporary Possession

1.1 The Applicant briefly outlined and justified its case for the compulsory acquisition (CA) and temporary possession of interests in land.

### Identification of the powers sought and their purposes

1.2 The Applicant stated that the draft Development Consent Order (dDCO) (REP7-006) seeks power to acquire land and rights (both temporary and permanent and new and existing) as required to carry out, or facilitate, or are incidental to the Awel y Môr Offshore Wind Farm development (AyM). This may be in relation to construction, operation or maintenance of the authorised development as outlined in the DCO.

1.3 The Applicant noted that every parcel of land required has been identified on a plot by plot basis as shown on the land plans submitted with the DCO application. This is further detailed in the Book of Reference (the “BoR”) (REP7-011) which sets out details of the interests in that land and the purposes for which it is required. For each plot the Applicant has identified in the BoR whether it is seeking the power to acquire that plot outright, the power to create and/or acquire permanent rights (including the potential for interference with existing rights), or the power to create and/or acquire temporary rights of possession and use.

1.4 The Applicant explained that the BoR is structured according to the requirements of Regulation 7(1) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. The Applicant advised that these can be described as follows:

#### (a) Part 1

The Applicant noted that this section contains the names and addresses of those who own, lease, occupy or have another interest in the land that will be affected by the authorised development and the rights contained in the DCO.

#### Category 1

The Applicant advised that a person is within Category 1 if, after making diligent inquiries, the Applicant knows that they are an owner, lessee, tenant, or occupier of the land.

#### Category 2

It was further noted that a person will be within Category 2 if they are interested in the land or have the power to sell and convey or release it.

### Persons Listed in Part 3

Parties recorded in Part 3 of the BoR (those who may be entitled to enjoy easements or other private rights which may be extinguished, suspended or interfered with) have also been included in Part 1.

(b) Part 2

The Applicant further explained that Part 2 of the BoR lists persons who may be entitled to make a relevant claim, also known as a Category 3 person.

A person falls within Category 3 if the Applicant believes that, if the DCO were to be made and fully implemented, they would or might be entitled to make a relevant claim as defined in section 57(6) of the Planning Act (PA) 2008. The Applicant advised that a relevant claim is a claim under:

- (i) Section 10 of the Compulsory Acquisition Act 1965;
- (ii) Part 1 of the Land Compensation Act 1973, or a
- (iii) Section 152(3) of the PA 2008.

As such, the Applicant explained that this Part contains the names and addresses of those who have an interest in the Order land and may be entitled to claim compensation for loss resulting from the implementation of the DCO and use of the authorised development. The Applicant further advised that this Part also contains the names and addresses of those without an interest in the Order land, who may nonetheless be entitled to claim compensation for loss resulting from the implementation of the DCO and use of the authorised development.

(c) Part 3

The Applicant stated that this Part contains the names and addresses of those who are entitled to enjoy easements and other private rights which it is proposed may be extinguished, suspended or interfered with in connection with the authorised development, pursuant to the DCO.

(d) Part 4

It was further noted that Part 4 identifies plots in which there is a Crown interest that will be affected by the authorised development and the rights contained in the DCO.

(e) Part 5

The Applicant advised that Part 5 of the BoR identifies plots which constitute "special category land" for the purposes of section 132 of the PA 2008 which will be affected by the authorised development and the rights contained in the DCO. The Applicant noted that this applies to land:

- the acquisition of which is subject to special parliamentary procedure;
- which is special category land; or
- which is replacement land.

The Applicant noted that is there is no loss of public open space no replacement land is identified or proposed and that as there will be no permanent change to the surface or use of the special category land it believes that when burdened with the Order right, the Order land listed within Part 5 will be no less advantageous than it was before to the following persons:

- the persons in whom it is vested,
- other persons, if any, entitled to rights of common or other
- rights, and
- the public.

1.5 The Applicant advised that the structure of the BoR is designed to identify the nature of interests sought, and thus it is to be read alongside the Land Plans (LP) which show a colour key of rights sought over each plot. This provides as follows:

- (a) Plots where permanent acquisition is sought are highlighted in pink. This only applies to two plots: 416 and 417 which are required for, to facilitate or are incidental to the Onshore Substation (OnSS) works.
- (b) Plots shown coloured blue identifies those which will be subject to acquisition of permanent rights (including restrictive covenants) pursuant to Article 20 (Compulsory Acquisition of Rights) and Schedule 7 (Land in which only new rights etc may be acquired) of the dDCO. These plots are included at Part 1 of the BoR.
- (c) Plots coloured yellow on the LPs are those which are subject to powers of temporary possession only, such as for the purpose of access, or areas only required during construction. These are listed in both Part 1 of the BoR and Schedule 6 of the dDCO.

1.6 The Applicant states that its approach to identifying the powers needed to deliver the AyM project has had due regard to the relevant statutory tests and guidance issued by the Department for Communities and Local Government in September 2013: “Guidance related to procedures for the compulsory acquisition of land”. The Applicant explained that a guiding principle in identifying the powers sought within the DCO has been to minimise the extent to which it interferes with the interests of others. This approach has been adopted as follows:

- (a) The Applicant explained that its starting point was to identify the works that would require permanent rights to be acquired such as: a permanent change of land use, the installation of apparatus, ongoing repairing or replacement obligations, ongoing duties and the need to inspect, maintain and remove, and finally any works related solely to the construction of the AyM project.
- (b) Where there are overlapping works areas, the acquisition type with the highest level of permanence is taken as the overriding right sought even though the full extent of this right may not be required.
- (c) The Applicant stated that it has aimed to minimise the extent of its interference with the interests of others. The Applicant noted that this has principally been achieved by the approach of seeking temporary powers over the majority of the Order land required to undertake the construction works. Post-construction permanent rights and restrictions are being sought over the ‘as built’ area of the cables. The Applicant explained that the alternative to this would have been to acquire all of the Order land, or wide rights over it, in order to undertake the AyM development. The latter approach, the Applicant advised, would have affected far greater areas than under the temporary powers approach.

1.7 The Applicant provided an example of how it has applied the above approach: explaining that, whilst a 40m cable corridor has been included as part of the Order land, this will likely be reduced post-construction to a 21m standard cable easement to protect the installed cables. This highlights that, whilst the 40m corridor must be included at the outset in order to ensure effective delivery of the AyM project, this will be reduced to just over half post-construction.

- 1.8 The Applicant noted that the only plots over which the Applicant proposed to exercise its compulsory powers to acquire the freehold were the two plots required for construction of the OnSS. Compulsory Acquisition is necessary in this instance as the nature of the development works and associated utilities infrastructure, permanent landscaping and ecological mitigation, compensation and enhancement works involve permanent change of land use and require the Applicant to secure the control of the land
- 1.9 The Applicant advised that it has taken the cautious approach of seeking powers of compulsory acquisition (or rights of use) in respect of all plots of land required for the scheme. It was noted that the Applicant requires to maintain this approach in order to ensure that it has the right to acquire the interests it needs across the whole of the Order land. This is of particular importance in the event that an unidentified owner later asserts an interest in land over which the Applicant believes it owns or has rights.
- 1.10 Further, the Applicant stated that plots had been removed from the Order land where no works are proposed, so as to avoid unnecessary incursion on the land and interests of affected parties. This includes land belonging to Natural Resources Wales (NRW) at Rhyl Golf Club, and a small area of proposed mitigation land at Ffrith Beach to avoid unnecessarily encroaching on leased land at North Wales Bowls Centre.
- 1.11 In terms of identifying the rights sought, the Applicant noted that these have been separated out within the dDCO and BoR depending on the works to be carried out. These are listed in Schedule 7 of the dDCO and Table 2 of the BoR as follows:

Rights in relation to:

- (a) Cables;
  - (b) Transition Joint Bays;
  - (c) Access;
  - (d) Visibility splays and highway verges;
  - (e) Mitigation work areas access, mitigation works;
  - (f) Temporary mitigation area works rights;
  - (g) Drainage; and
  - (h) National Grid substation works and access.
- 1.12 Where necessary for the protection of infrastructure or works, the Applicant also noted the inclusion of related restrictive covenants designed to protect the authorised development and maintain necessary visibility splays. This was noted to apply for both temporary and permanent mitigation works.

Compliance with statutory and policy tests – s122

- 1.13 The Applicant advised that the main statutory test applicable to DCO applications is set out at section 122 of the PA 2008, which provides that CA consent may be granted so long as the Secretary of State (SoS) is satisfied that the conditions at sections 122(2) and 122(3) are met. The applicable provisions were summarised as follows:
- (a) Section 122(2) provides that, in order for CA powers to be granted, land must be (a) required for the development to which the development consent relates; (b) required to facilitate or is incidental to that development; or (c) replacement land, given in exchange for the Order land under section 131 or section 132 of the PA 2008.

- (b) The Applicant then noted that the second condition, under section 122(3), is that there is a compelling case in the public interest for the land to be acquired compulsorily.

Compliance with statutory and policy tests – s123

- 1.14 The Applicant further noted the test under section 123(1) of the PA 2008, in which it is stated that an order granting development consent may include provision authorising the compulsory acquisition of land only if the SoS is satisfied that one of the following conditions applies:
- (a) the Applicant must have submitted a request for CA powers as part of the DCO application (s123(2)).
- (b) consent is obtained from all persons with an interest in the land (s123(3)); and
- (c) the prescribed procedure has been followed (s123(4)).
- 1.15 As the Applicant has requested these powers, the test at (a) above is considered to have been satisfied.

Guidance on the application of the tests

- 1.16 Further, the Applicant discussed how land may qualify as being required to facilitate a development, or be classed as incidental to it:

Required

- 1.17 In regard to the definition of what is “required” land, the Applicant cited case law which suggested that this meant land that was “necessary in the circumstances of the case” i.e. land which is not indispensable and needed to deliver the scheme proposed. The Applicant referred to the case of *Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council* [1991] 10 WLUK 169.
- 1.18 The Applicant further cited paragraph 11 of the “Guidance related to procedures for the compulsory acquisition of land” (Department for Communities and Local Government (DCLG) - September 2013) which sets out general considerations to be applied when considering whether compulsory acquisition is justified.
- 1.19 In regard to the first limb of the test, the Applicant highlighted that, in accordance with the Guidance, promoters must be able to demonstrate to the satisfaction of decision makers that the land is necessary for the development for which consent is sought and that it is no more than is reasonably required for purposes of the development.
- 1.20 The Applicant further advised that, in relation to the second limb, the decision maker must be satisfied that the land is required to facilitate or is incidental to the development. The Applicant cited the example set out at paragraph 11 of the guidance, which notes that the acquisition of land for the purposes of landscaping may only be permitted whereby the decision maker is satisfied that, without it, the land would not be landscaped to a satisfactory standard. The Applicant also emphasised the importance of necessity and proportionality in this assessment.

Compelling case in the public interest

- 1.21 Whilst the question of a compelling case in the public interest is one to be determined by the SoS, the Applicant nonetheless submitted that the case for AyM is clear and compelling.
- 1.22 The Applicant highlighted that the scheme is supported by several international and national obligations that combine to place the UK on a path to reduce carbon dioxide emissions and create safe, affordable, reliable energy with a strong focus on UK

generation and security of supply. It was further noted that, through the Climate Change Act 2008 the UK Government is committed to reducing greenhouse gas emissions by 100% of 1990 levels by 2050, and the UK Government has made it clear that offshore wind will play a key role in meeting this and other net zero and decarbonisation targets, including the increase of the 30GW by 2030 target to 50GW in April 2022. AyM will make an important contribution to the UK meeting those targets.

- 1.23 The Applicant further mentioned its National Policy Statement (NPS) tracker, provided at Deadline 3 (REP3-003). The Applicant highlighted that the policy and need case for AyM was updated in order to reflect that, in addition to support for the scheme from the NPSs, there is an increasing focus and urgency on the decarbonisation of the energy system and the deployment of new renewables capacity to achieve net zero. The Applicant emphasised the Intergovernmental Panel on Climate Change reports and statements, which contain an urgent message regarding the harmful and permanent consequences of failing to limit the rise of global temperatures, and that reducing emissions is a crucial necessity. This guidance, the Applicant noted, also identifies that progress since COP 26 has been woefully inadequate, despite the need to reduce greenhouse gas emissions by unprecedented levels over the next 8 years.
- 1.24 The UK's 6th Carbon budget requires a reduction in UK greenhouse gas emissions of 78% by 2035 relative to 1990 levels. This, the Applicant submits, is against a background of the increasing demand for electricity and a slow-down in the deployment of renewable energy development in Wales, evidenced in the Welsh Government's 2022 report Energy Generation in Wales 2020.
- 1.25 The Applicant therefore explained that this highlights a much steeper trajectory in terms of the scale and pace of action to reduce emissions, and thus it is essential that rapid progress is made through the 2020s. The Applicant stated that the rate of emission reductions must increase, otherwise the legally binding UK targets set on the Carbon Budgets will not be met. Despite this, the Applicant pointed to the UK Energy White Paper which indicate that electricity demand is expected to grow substantially as carbon intensive energy sources are displaced by electrification of other industry sectors, particularly heat and transport.
- 1.26 As such, the Applicant advised that decisions through the consenting system must be responsive to this changed position. The Applicant suggested that decision makers can do this by affording substantial weight to the energy policy objectives, as well as those set out in the current and revised draft NPSs, where the urgent need for new renewable energy generation capacity (including offshore wind) is stated to be urgent.
- 1.27 The Applicant therefore submitted that, further to this, the need case must be afforded substantial weight in the planning balance. It was noted that decision makers may do this by properly recognising the seriousness and importance of energy policy related considerations in the planning balance. The Applicant highlighted that is the cumulative effect of a large number of individual projects which will move Wales and the UK towards where they need to be, and AyM can make a large, meaningful and timely contribution to decarbonisation and security of supply. This, in addition to helping lower bills for consumers throughout its operational life, ensure AyM addresses important aspects of the UK's legal obligations and UK Government policy. The Applicant submitted a Life Cycle Assessment of AyM at Deadline 5 (REP5-006).
- 1.28 It was further noted that reducing Wales' and the wider UK's dependency on hydrocarbons has important security of supply, electricity cost and fuel poverty avoidance benefits. Those actions, the Applicant advised, already urgently required in the fight against climate change are now required more urgently for global political stability and insulation against dependencies on rogue nation states. The case for AyM is therefore urgent and important, and the project would deliver significant renewable energy generation and emissions reduction benefits.



- 1.29 The Applicant further addressed some of the wider benefits of the scheme, which the Examining Authority (ExA) and SoS should seek to recognise. These are set out in the Statement of Reasons (SoR) (REP7-032) and can be summarised as follows:
- (a) The ability to deliver biodiversity benefits through the enhancement of existing habitats and increased connectivity of those habitats;
  - (b) Provision of socio-economic benefits to local businesses through the construction and operation phases, noting the Applicant's contribution of £3 billion into Wales, and the example of the Gwynt y Môr project investing £90 million in Wales during construction, with investment in local skills and training;
- 1.30 The Applicant referenced the need for the SoS to consider the human rights implications of the CA of land and rights and the European Convention on Human Rights (ECHR). In this regard the Applicant urged the ExA to consider the Applicant's approach to CA and temporary powers. Rather than unnecessarily acquiring land for cables or permanent rights over extensive areas of land, it has taken the approach of seeking temporary powers and only taking rights or restrictions where these are needed to protect the installed infrastructure, or ensure mitigation and enhancement is effective.
- 1.31 In relation to the impact of the AyM scheme on affected agricultural holdings and, in relation to Faenol Brodor (FB), the Applicant highlighted that there had been submissions from FB's land agent in relation to the impact of the proposed land take on FB's farming enterprise. It was noted however that the agent has not been able to quantify what level of land take would negate their concerns.
- 1.32 Again, the Applicant reiterated that, whilst ultimately a matter for the SoS, the Applicant considers that not only has it met the tests in section 122 of the PA 2008, in that the land within the order limits is required for the development or is required to facilitate or is incidental to it, there is a compelling case in the public interest for the land to be acquired compulsorily.
- 1.33 The Applicant advised that the SoS will have regard to the extent of the land that can be acquired under order, and the Applicant has been engaging with those parties affected by CA for some time, working to secure private agreements to acquire the necessary land or rights. It was noted that this can provide more flexibility in the rights sought although the Applicant appreciates that there will be some reluctance to agree terms at this stage. The Applicant however advised the ExA to be aware that discussions and negotiations will continue post-examination, as has been the case on other projects in which agreements were formed in relation to almost all land interests prior to construction.

Other tests set out in DCLG guidance – All reasonable alternatives

- 1.34 The Applicant advised that, in relation to this test, two factors must be considered: (a) whether these rights could have been secured by alternative means; and (b) whether an alternative project would have avoided the need for CA.
- 1.35 The Applicant advised that the Applicant and its agents have been engaging with landowners on an ongoing basis with a view to securing voluntary agreements wherever possible. The Applicant however noted the importance of recognising that, for most linear projects, the number of land interests involved means that CA will be required to deliver the project. The Applicant referred to paragraphs 25 and 26 of the DCLG guidance which acknowledges this point.
- 1.36 In the absence of CA, all of the land and rights required to allow AyM to be constructed and operated may not be secured which may have implications for the deliverability of AyM. The Applicant submitted that it needs to have certainty that the required rights and land can be obtained within a reasonable timeframe and to be able to evidence this certainty to its funders in order to ensure that the development can proceed.

- 1.37 Given the linear nature of the onshore elements of AyM, the Applicant does not consider that an alternative project would have avoided CA, and no such case has been made in relation to the project.

Category 2 parties

- 1.38 Category 2 Affected Persons are identified in Part 1 of the BoR. The Applicant advised that it has not undertaken any direct negotiation with these parties at this stage, as the works proposed will not require extinguishment of any known rights, as these can co-exist alongside rights sought by the Applicant.

- 1.39 However, should this position change, the Applicant advised that it would seek to agree terms with those parties in preference to reliance on CA powers. The Applicant submitted that a good example of this would be "Wild Ground". In this instance, there are no active negotiations ongoing as the Applicant's understanding is that the rights Wild Ground have been exercising over the nature reserve are established and operational rights to connect to services and drains. As such, the Applicant does not consider that acquisition of this land would require surrender of rights on the basis that they can co-exist with the substation. The Applicant did however advise that this will need to be confirmed once the OnSS design is complete and the full extent of the interaction with existing rights is known. If greater interaction is determined, the Applicant would seek to engage with Wild Ground with a view to agreement and compensation, if necessary to extinguish the existing rights.

Clear intention of how to use land and funding available

- 1.40 The Applicant submitted that the Funding Statement (REP7-030) has now been updated. This, the Applicant noted, made it clear that funding was available, whilst the BoR and associated LPs identify how the proposed land will be used.

Legitimate purpose for CA

- 1.41 The Applicant advised that the legitimate purpose of the proposal was to facilitate the delivery of AyM, a scheme which will make an important contribution to the decarbonisation of the UK energy system and provide safe, secure and reliable renewable energy for which the UK and Welsh Governments have identified an urgent need.

- 1.42 The Applicant submitted that the purpose put forward was sufficient to justify an interference with human rights under Article 1 of the European Convention on Human Rights, in that they provide a compelling case in the public interest and show only a proportionate level of interference with private interests.

- 1.43 The Applicant further explained its position that there is a compelling case in the public interest, and that proper procedures in terms of notifications, consultation and application and examination had been followed.

Statutory Undertakers

- 1.44 The Applicant advised that section 127 of the PA 2008 governs the acquisition of statutory undertakers' (SU) land under CA powers, where objections have been raised and not withdrawn before close of the examination. It was advised that the Applicant would consider this in detail, however it was confident that any objections made by SUs would be withdrawn.

Open Space Land

- 1.45 Further to this, the Applicant touched upon the issue of open space land, as governed by section 132 of the PA 2008. It was noted that the Order land does include land that has been assumed to be open space land (such as Ffrith beach and the promenade). The Applicant advised that there would be no loss of open space under the current proposal, ensuring that the land will be no less advantageous when burdened with the order right. As such, no replacement land would be required.

Powers sought

- 1.46 The Applicant clarified the land sought as shown in Table 1 of the BoR, with particular reference to the specification of new rights only. It was noted that Articles 21, 22 and 29 of the dDCO refer to the acquisition of existing rights.
- 1.47 The Applicant advised that it is clear throughout the dDCO that the undertaker would have a right to acquire permanent rights or create new rights as proposed. Although it was noted that there is currently no certainty that this will be needed.

Article 27 – Temporary use of land for carrying out the authorised development

- 1.48 The Applicant explained that this article provides powers to enter the Order land and use that land for various purposes, including the construction of the AyM development (cable installation and substation works) prior to taking an interest in the land. As explained when setting out the Applicant's approach to securing the necessary interest in land, the Applicant highlighted that this is an important provision as it will form the basis on which the Applicant undertakes the construction of the scheme. The Applicant advised that an alternative would be to acquire rights and restrictions over whole of the Order land before construction starts, meaning that wider areas of land are permanently affected by the AyM development, rather than just those needed for the OnSS and mitigation footprint, in order to protect installed cables and provide necessary access for mitigation and operation and maintenance.
- 1.49 The Applicant sought to summarise the Article as follows:
- (a) It was noted that paragraph (1) sets out the powers of the Applicant to enter and take possession of land within column 1 of Schedule 6 for purposes set out in the schedule;
  - (b) Sub-paragraphs (1)(b) – (e) were noted to set out the activities that may take place on land subject to temporary possession.
  - (c) Paragraph (2) requires the Applicant to give at least 3 months' notice of taking temporary possession and to confirm, where not referenced in Schedule 6, the purpose of the temporary possession;
  - (d) Paragraph (3) provides a time limit for temporary possession which, the Applicant advised, was one year following completion of relevant work. This would be the case both for parcels of land identified in Schedule 6 and for those areas where permanent works will have been constructed under sub-paragraph (1)(a)(ii);
  - (e) Paragraph (4) ensures that temporary works are removed before giving up possession, where acquisition of permanent rights and restrictions have not been commenced for permanent works;
  - (f) Paragraph (5) provides a right to compensation where damage is caused to land. This works alongside paragraph (6) on dispute resolution in relation to compensation;
  - (g) Paragraph (8) is designed to provide clarity regarding the acquisition of land identified in Schedule 7 (on CA of rights only). This provision states that the only use for these powers is for the purpose of providing SU diversions. The Applicant however committed to redrafting this provision;
  - (h) Paragraph (9) provides confirmation that if TP is taken then there will be no requirement on the Applicant to acquire land or any interest in it;
  - (i) Paragraph (10) incorporates provisions from the Compulsory Purchase Act 1965, providing remedies for the Applicant if possession is refused (such as the ability to seek a warrant for entry);

- (j) Paragraph (11) provided further clarity on the limitation of temporary possession powers in sub-paragraph (1)(a)(ii) to land identified for acquisition of land or rights.

#### Article 27(8)

- 1.50 The Applicant explained that Article 27(8) aims to prevent the Applicant from compulsorily acquiring new rights or subsoil in land which is referred to in Article 27(1)(a)(i). Article 27(1)(a)(i) describes land specified in columns (1) of Schedule 6 (land of which only temporary possession may be taken). Therefore, the Applicant explained that it is prevented from acquiring rights in land identified for temporary possession only.
- 1.51 The Applicant advised that Article 27(8) should make reference to the relevant land being identified in Schedule 7 (land in which only new rights etc may be acquired). This wording has been added to the revised dDCO. The Applicant further highlighted that the term “acquisition of rights” should be interpreted so as to cover both new and existing rights. As such, Schedule 7 provides a shortened summary of new and existing rights.
- 1.52 Despite the revised wording however, the Applicant acknowledged that Article 27(8) still appears to make provision for CA of rights in land identified for temporary possession only. The intention of this Article was to provide clarity in the context of the wider Article on temporary possession, and to ensure that CA rights could not be acquired over Schedule 6 land unless in the very limited circumstance that it is needed to facilitate an SU diversion. The Applicant advised that this provision would be redrafted.

## **2 Site Specific Issues for the Applicant**

- 2.1 The Applicant provided an update on the progress of negotiations with affected parties and the timetable for their conclusion.
- 2.2 The Applicant noted that the latest update on the status of negotiations with affected parties is set out in the “Update on Negotiation with Landowners, Occupiers and Statutory Undertakers” document (REP6-016). The Applicant noted that, to date, three sets of Heads of Terms (HoTs) had been agreed covering areas of operational access and visibility splay. The Applicant advised that agreeing HoTs are a key initial stage prior to agreement of land options, and it was noted that work remains ongoing to pursue further signed agreements. The Applicant explained that endeavours were being made to progress matters of a commercial nature by increasing the baseline land value negotiating mandate on the cable easement discussions by 40% since negotiations commenced in December 2021. The Applicant further advised that a similar uplift had been applied to rates applicable to temporary construction compounds and ecological mitigation areas. The Applicant considers this demonstrates its willingness to try and secure voluntary agreements with affected landowners.

#### Current status of negotiations

- 2.3 The Applicant considered that negotiations were at an advanced stage with the majority of landowners, and would expect to have secured HoTs with a number of additional parties by the end of the examination period. With those landowners and occupiers where negotiations are less advanced, the Applicant noted that it will endeavour to engage with the affected party and their appointed representative (as appropriate) beyond the end of the examination period with a view to resolving the outstanding points of difference.

#### Completion of agreements

- 2.4 Moving forward to the completion of option agreements, the Applicant advised that draft documents were currently with its appointed agents for review and once this review was complete and any necessary amendments were carried out, the documents would be made available for circulation to affected parties, their appointed agents and solicitors. The Applicant further noted that, once HoTs are signed and legal representatives are engaged, it would aim to conclude option negotiations within 12 weeks. It was however noted that this would depend on a number of factors outside of the Applicant’s control,

including engagement from affected parties' legal representatives and consents from third parties such as mortgage providers.

- 2.5 The Applicant further stated that it is not uncommon for negotiations to remain ongoing at this stage and these negotiations will continue after the close of the examination. The Applicant advised that, with the exception of early round table discussions in January and February 2022 where some agents did very helpfully convene to discuss generic HoTs, the establishment of land interest groups has not been in place here with transactions broadly being dealt with independently. While the Applicant entirely appreciated that each land agent would have their own independent views on matters and there would be matters which are unique to each holding, it was noted that the individual approach to negotiations does naturally give rise to a more protracted period of discussions. However, the Applicant advised that recent experience on other RWE projects suggests that agreements will be secured with most (if not all) relevant parties before construction works commence.

#### Network Rail

- 2.6 The Applicant stated that negotiations with Network Rail are progressing with further discussions on the commercial element of the agreement ongoing.

#### The Crown Estate

- 2.7 The Applicant advised that it was awaiting draft documents from TCE. It was noted however that the terms proposed by TCE were thought to be broadly agreeable by the Applicant.

#### Welsh Government

- 2.8 The Applicant advised that HoTs were circulated on 20 May 2022 to all representatives in the property and highway departments at the Welsh Government (WG) with whom the Applicant's land agent had previously held discussions with. It was noted that HoTs had been split as per the 3 entities of the WG being: the National Assembly for Wales, The Secretary of State for Wales and The Welsh Ministers. It was explained that HoTs had been issued in order to cover the operational extents of the A55 and another for the non-operational land held by the WG. The Applicant advised that it awaited comment from WG on the instruction of an external agent to undertake a valuation and who at WG will progress the HoTs.

#### Negotiations Document

- 2.9 The Applicant provided a summary of the negotiations document (REP7-014) which had been submitted to the examination:
- 2.10 With regards to paragraph 1, the Applicant explained that leaseholders and tenants are listed below respective landlords. It was noted however that whilst the owners of Plot 17, 285 and 331 are listed in the BoR, the lessees/tenants are not.
- 2.11 The Applicant explained that Plot 17 will be subject to temporary possession only, and thus there is no intention to acquire any rights from the leaseholder or obtain the consent of the leaseholder to the terms of an agreement for permanent rights. The Applicant explained that negotiations with the freehold owner of the land in respect of any temporary rights required will be addressed when the extent of works are known after the detailed design stage. It was further advised that such detailed design and the eventual impact on this affected party's leasehold area would be strongly linked to the design of and construction progress of the coastal flood defence works in this area. The Applicant therefore noted that, if it is envisaged at this stage that works for the creation of an access will affect the leaseholder's demise, it shall engage with them in collaboration with the freehold owner to agree most likely a tripartite licence agreement.

- 2.12 Further, in addressing the interests under Plot 285 (The Executor of the Estate of Richard Dodd), the Applicant explained that it had recently been informed by the landowner's appointed agent that the land is now farmed by Raymond Ivor Beech. As such, the Applicant advised that the BoR would be updated. Given that the land is now owned and occupied by the same party there would be no requirement for any form of occupier's consent.
- 2.13 The Applicant then considered the interests at Plot 331, held by Huw Jones as tenant of Wynford Davies. The Applicant advised that the landowner's appointed agent had confirmed the termination of the tenancy on 31 March 2022. It was therefore understood that the land was now farmed in hand by the family and, as such, there was no tenant in situ. Again, the Applicant advised that it would update the BoR.

#### Why some landowners are listed numerous times

- 2.14 The Applicant advised that the negotiations document is laid out in such a way so as to show tenants and leaseholders underneath the entries for the respective landlords. It was noted that this approach was designed to ensure that individual transactions could be tracked throughout the negotiation process, and the Applicant noted that the template used is broadly similar to that used on the Hornsea 4 project. The Applicant agreed that it would include plot numbers into the document for ease of reference.
- 2.15 With regards to the multiple listing of parties, the Applicant further explained that some affected parties are both owners and occupiers of land, and that others have multiple tenancies along the cable route. It was highlighted that the status of negotiations relating to the Applicant's rights may differ from those regarding the terms of their occupiers consent, and therefore the Applicant submitted that this was the clearest way to show landlord and tenant arrangements.

#### CA Schedule – Lines 28 and 29

- 2.16 The Applicant noted that there had been an error in the status of negotiations document whereby the land interest listed at line 28 in the CA schedule had been omitted from the document. The Applicant noted that this omission would be corrected. It was however noted that the negotiations referred to in this section remained ongoing.
- 2.17 In respect of line 29, the Applicant explained that it had listed the respective Trustees of the maintenance fund, being: Ralph Collins, James Vernon, Owain Rowley Conwy and Tom Rowley Conwy. The Applicant further explained that Mr Collins of Carter Jonas is also the land agent, however he is listed in the document under his capacity as trustee.

#### Unknown interests

- 2.18 The Applicant was further asked to explain whether it had made any further investigations in regard to the seemingly "unknown" interests at Plots 96, 97 and 98. The Applicant responded that these plots are included within the land at Lyons Caravan Holiday Park.
- 2.19 Given the nature of the landholding being an active caravan holiday park, the Applicant explained that it was entirely reliant on the landowner to provide information on the occupants or pitch holders of the park. The Applicant went on to advise that the Holiday Park's appointed agent and representatives had been understandably reluctant to divulge information relating to the details of individual pitch leaseholders due to data protection concerns.
- 2.20 In the absence of information from the landowner, the Applicant explained that its appointed land agent had placed land interest notices at the entrance of the Lyons Caravan Holiday Park. This however received only a limited number of responses. The Applicant therefore stated its view that all reasonable endeavours had been made to ascertain the details of the individual pitch leaseholders on a voluntary basis, and thus any further endeavours would potentially be detrimental to the working relationship the Applicant currently has with the Park and the Park's appointed agent.

- 2.21 The Applicant advised however that there was unlikely to be any impact on caravans as these will not need to be moved and no active use will be disrupted. This was owing to the fact that cables would be put underneath caravans and access to lay cables would not go via the Park. As such, the Applicant advised that the impact would instead be an increase in people walking around the caravan park for maintenance purposes.
- 2.22 With regards to other unknown interests in the BoR, the Applicant was of the opinion that that the required level of due diligence had been carried out to date but noted that further information on these interests may be forthcoming as part of the property transactions.

#### References to Welsh Government

- 2.23 The Applicant explained that the entry for “Welsh Government” is an amalgamation of The National Assembly for Wales, Secretary of State for Wales and The Welsh Ministers. The Applicant highlighted that the appropriateness of this approach had been confirmed in email correspondence received from a representative of the WG which stated that, for the purposes of the property transactions, the three WG entities can be treated as one. This, the Applicant advised, was the manner in which discussions regarding rights over the A55 rights and surrounding land, as well as the section 135 consent, had been continuing. It was further noted that this approach mirrored that taken to date in representations made to the examination by the WG, as comments had not been received from the individual factions of the WG.
- 2.24 In response to a request by the ExA, the Applicant confirmed that it would split line 30 of the “Table of Compulsory Acquisition and Temporary Possession Objection” (REP7-016) so as to show each WG entity.

#### Land Farmed at Faenol Bropor

- 2.25 The Applicant discussed a meeting held between its appointed land agents, the owners of FB and their appointed agent on 27 September 2021. It was noted that this meeting had been held as part of the s.42 consultation process, during which a significant proportion of FB was identified as being within the Preliminary Environmental Information Report (PEIR) boundary as an area of search for ecological mitigation. The Applicant advised that it believed the additional land occupied by FB lay to the north of Coed y Gors.

#### Timeline for the CA of rights sought - Operational Accesses

- 2.26 The Applicant explained that the operational accesses for the cable route had been designed via a desktop review of existing accesses used by agricultural machinery to navigate the fields. It was noted that the access routes were designed to avoid environmental constraints and the requirement to remove any trees, hedgerows or permanent features that would restrict the Applicant exercising the rights to maintain its cables.
- 2.27 The Applicant advised that Plots 142 and 145 are required in order to secure access to the southern section of Plot 140, which lies to the eastern extent of the Order Limits and has been deliberately divided from Plots 146 and 144 to ensure only the permanent operational access rights endure once the ecological mitigation areas (if required) are restored to agricultural use and returned to the landowner.
- 2.28 The Applicant confirmed that in securing rights through compulsion there is no ability to acquire time limited rights. As such, the Applicant noted that it has included in the application the proposal for permanent acquisition of rights over Plots 142 and 145.

#### Mitigation of landscape and visual effects around the OnSS

- 2.29 The Applicant advised that the Outline Landscape and Ecological Management Plan (OLEMP) (REP7-026) set out the mitigation principles and outline planting principles relating to mitigation of landscape and visual effects. It was noted that Figure 2 of the OLEMP was an illustrative arrangement highlighting where landscape proposals could be

located to achieve the mitigation set out and assessed in the landscape and visual impact assessment.

- 2.30 The Applicant explained that the works areas set out in Part 1 of Schedule 1 of the DCO included provisions to allow for landscape planting works within much of Plot 417, as shown on the LPs (REP6-028). The Applicant further advised that some of the locations currently identified for woodland screening were located with gaps associated with the underground cables, as shown in the worst possible location from a landscape and visual perspective for the purpose of assessment. As part of the detailed design stage, it was advised that the layout and landscape and visual mitigation provided by the landscape proposals would be the subject of consultation with interested parties as well as requiring agreement from Denbighshire County Council (DCC) and NRW.
- 2.31 The Applicant continued to explain that the OnSS had been located centrally within the identified land for a variety of reasons, and that these were set out in the site selection and alternatives ES chapter (APP-044). The location of the OnSS was said to ensure sufficient space to the north and south in order to accommodate both the necessary landscape and visual mitigation and ecological compensation, mitigation and enhancement. The Applicant explained that these areas would also allow for the provision of landscape and biodiversity to link and provide connectivity of habitats around the substation area and also ensure that landscape screening is provided for residential and other receptors, particularly to the north and south. In addition, it was advised that the retained open areas of habitat between the woodland and hedgerow structure would ensure that the character of these parts of the landscape is maintained.
- 2.32 The Applicant further noted that the woodland areas shown to the north of Glascoed Road would serve the purpose of screening views of the proposed OnSS as seen from the properties and crematorium business, as well as by users of Glascoed Road. It was therefore highlighted that planting in close proximity to the properties and other receptors would ensure that screening of the substation could occur more quickly than would be the case if the woodland areas were located further away. The Applicant emphasised that the woodland shown in the north-west corner of the site to the south of the Bridleway was located for the purpose of screening views of the OnSS from residential properties and other receptors to the north. The Applicant noted that woodland in closer proximity to the substation provides further screening in views from the properties located to the south at slightly higher elevations, the A55 and residential receptors to the north, Bodelwyddan Park and Garden to the west and from within the Glascoed Nature Reserve and St Asaph Business Park located to the east.
- 2.33 It was then noted that the area defined as the Temporary Construction Compound offered the potential for provision of planting areas for potential screening, ecological and landscape connectivity and reinstatement of historic hedgerow boundaries. Such proposals, the Applicant advised, would come forward as part of the detailed design and final Landscape and Ecological Management Plan (LEMP).

Plots 415, 416 and 417

- 2.34 The Applicant advised that the location outlined as Plot 416 included the bridleway to the north of Plot 417, and this area is important for screening and biodiversity benefits through connectivity provided by hedgerows and hedgerow trees. The Applicant explained that ownership and responsibility for management of the existing hedgerows and trees and proposed replacement hedgerows along the bridleway, including areas that lie within their root protection areas, was important to ensure that the integrity and long term screening effect was maintained.
- 2.35 The Applicant explained that Plots 416 and 417 had been identified as requiring permanent rights given that there is a need for permanent landscaping, permanent drainage ponds and permanent ecological mitigation and enhancement. The Applicant further expressed that it would need permanent control over these areas, including the need to exclude the rights of others.



- 2.36 Plot 415 on the other hand is noted as being required purely for drainage purposes and the Applicant is not looking to compulsorily acquire that land. The drainage rights proposed here were said to be additional to and not instead of the rights required at Plot 416.

#### Stopping up the bridleway

- 2.37 The Applicant stated that it had no intention of stopping up the Public Right of Way (PRoW) in relation to the bridleway at Plot 416, and thus any stopping up which did take place would be temporary under the DCO. The Applicant emphasised that any permanent stopping up would require a separate application to DCC in line with process at the time, thus ensuring that the Applicant was in no more of a privileged position than any other potential landowner.

#### Necessity for CA over Plots 416 and 417

- 2.38 In justifying the need for CA over Plots 416 and 417, the Applicant explained that all of this land is necessary for the AyM project. It was noted that this area includes various works such as landscaping, ecological and drainage works. The Applicant again reiterated that rights had been included so as to deliver landscaping that would be beneficial and provide effective screening to local residential receptors.
- 2.39 The Applicant described these requirements in more detail, noting that the area would provide:
- (a) Ecological compensation for the temporary loss of habitat arising from the OnSS, cable and access works during construction;
  - (b) Ecological compensation for the permanent loss of habitat due to the OnSS and operational access road;
  - (c) Ecological enhancement for the onshore aspects of the project;
  - (d) Landscape and Visual mitigation in the form of landscape planting;
  - (e) Features for the management of surface water (likely to require attenuation); and
  - (f) The provision of landscape mitigation and ecological mitigation, compensation and enhancement (which is delivered in the same location to reduce the overall long-term land-take of the project).
- 2.40 It was also noted that the above proposals are considered satisfactory by DCC and NRW as had been reflected in Statements of Common Ground and written responses.

#### Policy requirements for biodiversity enhancement

- 2.41 The Applicant explained that there was a need for developments to secure 'resilience' through the provision of net benefits for biodiversity, and that this was a key aspect of national policy.

#### National Policy Statement EN-1

- 2.42 The Applicant highlighted that, under NPS EN-1, it was bound to show how the project had taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Further, as a general principle, and subject to the specific policies below, the Applicant noted that developments should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. In circumstances where significant harm cannot be avoided, the Applicant highlighted the need for appropriate compensation measures should be sought.

- 2.43 It was advised that development proposals provided many opportunities for building-in beneficial biodiversity or geological features as part of good design. As such, when considering proposals, the Applicant emphasised that when considering proposals, the Secretary of State should maximise such opportunities in and around developments, using requirements or planning obligations where appropriate.

Draft NPS EN-1

- 2.44 Further, the Applicant explained that the draft NPS EN-1 encourages developers to consider how proposals can contribute to net benefits for biodiversity. This was said to be set out at Paragraph 5.4.4 of the draft NPS EN-1, which notes that the scope of potential gains would depend on the type, scale and location of each project. Further reference to the need to maximise restoration, creation and enhancement of biodiversity was said to be contained at Paragraph 5.4.17 of the draft NPS, which suggests that considerations and opportunities may be identified via means including Local Nature Recovery Strategies and national targets.

DEFRA Policy Paper (23 Feb 2023) Nationally Significant Infrastructure: action plan for reforms to the planning process

- 2.45 The Applicant highlighted Section 4.7 of the Guidance, which states:

*“We will incorporate biodiversity net gain (BNG) requirements for all (terrestrial) NSIP projects from November 2025 and develop an approach for marine net gain (MNG). The biodiversity net gain requirement for NSIPs is to achieve at least 10% measurable net gain on all terrestrial and intertidal development, which is to be secured for at least 30 years. Defra is developing a draft biodiversity gain statement, which will set out the detail of the biodiversity net gain requirement for NSIPs. Defra plans to consult on this draft statement in early 2023”.*

- 2.46 The Applicant noted that until this comes into force, the position for NSIPs in Wales remains unchanged with no current requirement to quantify losses and gains through use of a metric. This position has been confirmed by both NRW and Welsh Government.

- 2.47 It is this qualitative approach, in close consultation with stakeholders, that the Applicant has used in the development of the proposed mitigation, compensation and enhancement proposals that have been developed with input from NRW and Denbighshire County Council.

Planning Policy Wales 11 2011

- 2.48 The Applicant specified Section 6.4.3, which states that *“Development plans, strategies, policies and proposals must consider the need to support the conservation of biodiversity, in particular the conservation of wildlife and habitats”.*

- 2.49 It was noted that this paragraph then goes further to advise that applicants should *“ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats”* and *“ensure statutorily and non-statutorily designated sites are properly protected and managed.”*

- 2.50 Further obligations is also placed on applicants to *“safeguard protected and priority species and existing biodiversity assets from impacts which directly affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water and soil, including peat”* and *“secure enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks”.*

- 2.51 The Applicant noted that the proposals for the area around the OnSS will improve both biodiversity resilience and the connectivity of existing biodiversity assets through opportunities to maintain and strengthen the linkage between Glascoed Nature Reserve and habitat within Bodelwyddan Park currently used by great crested newts. There is

additional opportunity to connect blocks of ancient woodland in the north of the site to ancient woodland within Bodelwyddan Park.

Well-being of Future Generations Act (Wales) 2015

- 2.52 The Applicant mentioned the Well-being of Future Generations Act (Wales) 2015, which defines its aim as the creation of:

*“A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change”.*

- 2.53 The Applicant explained that AyM had sought to minimise effects of the scheme through avoidance of ecological impacts. This has been achieved via siting and routing, with mitigation and compensation measures proposed where impacts were predicted to occur. In addition, the Applicant stated that AyM would provide new benefits for biodiversity, through proposed enhancement measures additional to those provided as part of mitigation or compensation measures, although they can be complementary.

Environment (Wales) Act 2016

- 2.54 The Applicant further noted that this legislation introduced the concept of Sustainable Management of Natural Resources and set out an approach to planning and managing natural resources which ensures that benefits provide for social, economic, environmental and cultural well-being now and for future generations.

- 2.55 It was stated that Part 1 Section 6 of the Environment (Wales) Act 2016 introduces a biodiversity duty which requires public authorities to seek to maintain and enhance biodiversity in the exercise of their functions and in so doing promote the resilience of ecosystems.

Future Wales: The National Plan 2040

- 2.56 The Applicant mentioned Policy 9 on Resilient Ecological Networks and Green Infrastructure, which states that the WG will work with key partners in order to ensure the enhancement of biodiversity, resilience of ecosystems and the provision of green infrastructure. This work, the Applicant noted, would include the identification of key areas in need of safeguarding and opportunities for existing and potential green infrastructure to be maximised. The latter objective would require the use of nature based solutions as a key mechanism for securing sustainable growth, ecological connectivity, social equality and well-being.

- 2.57 In all cases, the Applicant noted that action towards securing the maintenance and enhancement of biodiversity, the resilience of ecosystems and Green Infrastructure assets must be demonstrated as part of development proposals through innovative, nature based approaches to site planning and the design of built environment.

Welsh Government Natural Resources Policy (2017)

- 2.58 This policy targets the need to build greater resilience in ecosystems by ensuring greater resource efficiency and reducing pollution.

NRW North East Wales Area Statement

- 2.59 The Applicant advised that the statement by NRW identified 5 key themes:

- (a) climate emergency: resilience and adaptation;
- (b) develop and improve urban/rural green infrastructure;
- (c) increasing woodland cover;

- (d) promoting the resilience of ecosystems in maintaining and enhancing biodiversity; and
- (e) protecting water and soil through farming and sustainable land management.

Nature Recovery Action Plan for Wales 2020 – 21

- 2.60 This action plan provides an objective to increase the resilience of natural habitats by establish new habitats and restoring those which have been degraded.

Compliance of AyM with policy requirements

- 2.61 The Applicant stated that nature based principles for the design of the OnSS area had been developed from the outset using the Evidence Plan Process in collaboration with NRW and DCC. The applicant noted that this is recorded in respective draft Statements of Common Ground (SOCG) and meets the requirements of draft NPS EN-1, para 5.4.23 in relation to the requirement for the Secretary of State “to take account of what mitigation measures may have been agreed between the applicant and the SNCB”. This process also meets the requirement within Future Wales: The National Plan 2040 Policy 9 in relation to Resilient Ecological Networks, which asks that actions securing the enhancement of biodiversity must be demonstrated as part of development proposals through innovative nature based approaches.

- 2.62 Setting aside hard engineering constraints such as the presence of the water main, the Applicant stated that the outline scheme illustrated in the OLEMP minimises hedgerow and tree loss, and retains all ponds, so as to maintain existing ecological networks as far as possible. From this starting point the design had been developed in line with the Future Wales definition of resilient ecological network, which is:

*“... Networks of habitat in good ecological condition linking protected sites and other biodiversity hotspots across the wider landscape, providing maximum benefit for biodiversity and well-being”*

- 2.63 The Applicant then explained that the various elements illustrated on the plan included in the OLEMP demonstrate how the project has been driven by legislative and policy requirements. It was noted that since there remains a degree of optionality about the scheme design, there is a consequential degree of optionality for type, location and extent of landscape and ecological mitigation, compensation and enhancement. It was highlighted that the plan in the OLEMP is an illustrative example and serves only to show that the project can provide adequate mitigation, compensation and enhancement within the Order limits.

Compensation Measures

- 2.64 The Applicant explained that one of the main ecological drivers is the requirement to reduce impacts to the nationally important Great Crested Newts (GCN) metapopulation which uses ponds within and surrounding the OnSS (as identified by the Applicant on Figure 27 in the Onshore Biodiversity ES chapter (APP-066)). The Applicant further noted that construction and continuing presence of the OnSS would, in the absence of mitigation and compensation serve to reduce the availability of foraging habitat to the metapopulation and prevent east-west movements between ponds.

- 2.65 The Applicant went on to confirm that location of compensation must be
- a. contiguous with habitats used by the GCN, in order that the local GCN population has access to it;
  - b. as close as possible to that lost in order to minimise impacts and
  - c. in all cases within 500m (500m being the dispersal distance for GCN).

- 2.66 Further, to minimise impacts, the Applicant described that it is necessary to provide this prior to or at the commencement of construction in order that the local GCN population retains access to an equivalent terrestrial habitat resource (i.e. will experience no net loss of habitat). For that same reason, it would also be necessary to maintain it for the duration of the operational lifetime of the development. The Applicant set out that during construction there is a need to provide compensatory habitat that is retained and protected and that the OLEMP plan therefore identifies approximately 6ha of compensation habitat outside of the construction footprint (shown coloured orange), which will be enhanced from ecologically poor agricultural grassland to more provide suitable grassland for foraging and sheltering GCN that would otherwise use the areas affected by construction (approximately 21ha), or areas which prove inaccessible as a result of construction. Culverts would be included beneath operational or permanent access routes, to ensure that the ponds on site remain accessible to the GCN metapopulation such that there is no functional loss of potential breeding sites.
- 2.67 The Applicant went on to explain that compensatory hedgerow and woodland planting will also commence in areas unaffected by construction, and in advance of construction where possible. About 670m of hedgerow - a Section 7 habitat under the Environment (Wales) Act 2016 - would be lost as a result of the OnSS and batter slope shown on the OLEMP plan. The Applicant confirmed that compensation for loss of these will also serve to mitigate and compensate for associated impacts to sheltering and foraging GCN, as well as other protected and notable species including but not limited to bats, reptiles, breeding birds, hedgehogs, brown hares and polecats.
- 2.68 In illustrating how and where the hedgerows and woodland planting may be included within a scheme of mitigation and compensation, the Applicant asserted that there are two main factors: the need to provide landscape screening and the need to re-instate the habitat network. Landscape screening is primarily needed to the north and south of the substation in east-west orientations, the habitat network requires links to be reinstated in a north- south direction too.
- 2.69 Also involved in the Applicant's decision making process in terms of habitat network is the need to mitigate and compensate for loss of bat roosts, and trees with potential roost features (as stated in the OLEMP para 115 Principle 1: no net loss of potential roosting habitat). The Applicant explained that construction of the OnSS and need to tie in land levels shown on the OLEMP plan would result in felling of 13 trees with bat potential (based on currently available data). Each of those supports a number of potential roost features (PRF) for which compensation would be needed in advance of felling. This would include bat boxes installed upon retained trees or poles, re-use of whole felled trunks or veteranisation of existing mature trees. The Applicant went on to describe that since bat boxes are typically installed at no more than 2 or 3 per tree or pole and as a conservative estimate, most of the trees that will be felled have at least four PRF, then there will be a requirement for at least  $(4 \times 13/3)$  18 mature trees or poles, in suitable locations (close to the tree that has been lost, within or near a flightline, not illuminated) upon which to affix bat boxes. It was noted that there were existing mature trees in Plot 416 which would be suitable for bat mitigation.
- 2.70 The Applicant concluded this section by reaffirming that the policy requirement for connection and the need for landscape screening is part of the reason that there is not a like for like replacement between the extent of the scheme footprint and the extent of the mitigation/ compensation and enhancement areas at the OnSS.

#### Enhancements

- 2.71 The Applicant confirmed that these have also been considered from the outset as complementary and additive to the mitigation and compensation already outlined, and agreed with DCC and NRW - and are necessary for the scheme to be policy compliant. The Applicant advised that ecological enhancements have been located in areas where they will bring most ecological benefit. In general that means linking into existing habitat networks, joining together or expanding important species populations, to create a larger,

more resilient system. The Applicant also set out that enhancements would require management and monitoring for the life of the development (in line with the principles set out in the OLEMP with final details to be agreed via the final LEMP under DCO Requirement 13) and this also had a bearing on location, particularly given the Applicant's intention to take freehold possession of the OnSS site and surrounding land.

2.72 On that basis, the Applicant confirmed that enhancements were considered best located at the OnSS site where they could build upon the planned landscape and ecology mitigation and ecology compensation measures already described for AyM, on a site that is contiguous to an area of similar purpose for SABP (i.e. at Glascoed Nature Reserve). In so doing the value of the whole ends up being greater than the sum of its parts and greater ecosystem resilience achieved.

2.73 The Applicant highlighted that the OnSS area is within the NRW Woodland Network Focal Area (this was identified in the PEA Figure 4.6). NRW states in section 4.3 of "A Handbook on Habitat Networks, 2019) that these network maps should be used to (amongst other things)

2.74 *"guide the location of habitat restoration, creation and management to improve ecological connectivity and ecosystem resilience"*.

2.75 The Applicant noted that the issue of ecological resilience was covered at ISH 3, but provided a short recap of two main points. This included that there are policy requirements in respect of connectivity, such as (but not limited to) PPW 11 2011 Section 6.4.3 which includes a bullet point that specifically requires development proposals to consider the need to

- *secure enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks.*

2.76 The Applicant also confirmed that Future Wales: The National Plan 2040 – Policy 9 Resilient Ecological Networks and Green Infrastructure is also pertinent as the Welsh Government seeks to

*Identify opportunities where existing and potential green infrastructure could be maximised as part of placemaking, requiring the use of nature based solutions as key mechanism for securing sustainable growth, ecological connectivity, social equality and well-being.*

2.77 The Applicant advised that the ecological measures (mitigation, compensation and/or enhancement) illustrated in the OLEMP had been located in areas designed to bring most ecological benefit, whilst also meeting other specific requirements such as for European Protected Species licences, landscape and hydrology. As such, the Applicant explained that the design accords with the "rules of thumb" related to the diversity, extent, condition and connectivity referenced in NRW's report, "Terrestrial and Freshwater Resilient Ecological Networks: a guide for practitioners in Wales" (2021).

2.78 Further, it was noted that hedgerows, woodlands and ponds had been proposed at locations which link to the existing green and blue infrastructure. The Applicant explained that the plan shown in the OLEMP provides one potential illustration, using the principles that would be applied, and should not be seen as fixed. The Applicant explained that it demonstrates the opportunity to deliver the mitigation, compensation and enhancement that may be required, and which would be determined as part of final design. Enhancements include:

- Creation of five additional ponds/ pools located to the south east of the OnSS and ongoing management of the new ponds plus two existing ponds; helping to sustain the nationally important GCN metapopulation. This move has been confirmed by NRW (through bilateral discussion on 26 November 2021 and confirmed via subsequent agreement on minutes

as well as Relevant Representations and Written Reps and SOCG) as assisting to move the SABP GCN population toward favourable conservation status (noting that Gwynt y Mor and Burbo Bank both included creation of 3 ponds). NRW confirmed (also via a meeting on 26 November 2021 and minutes) that SUDs ponds cannot be considered as part of GCN enhancement.

- Creation of five reptile/amphibian hibernacula each measuring at least 1m<sup>3</sup> and constructed from on site materials including soil, logs, brash and stone;
- Creation of twenty reptile/amphibian refugia, each comprising brash piles or log stacks, at least 0.25m<sup>3</sup>;
- Erection of ten bat boxes (additional to those required as compensation for potential roost features (PRFs) to be lost) and ten bird boxes, including two pole mounted barn owl boxes;
- Scrub management to promote structurally diverse grassland habitat and benefit reptiles and amphibians;
- Creation of species-rich, lowland meadow Priority Habitat and diverse neutral grassland, plus management thereafter to ensure its nature conservation interest is maintained; and
- Creation of locally native broadleaved woodland, including locally sourced black poplar *Populus nigra*.

- 2.79 The Applicant confirmed that NRW has confirmed (RR-0.15) that it agrees with the proposed principles for mitigation of protected species in the LEMP.
- 2.80 The outline design proposed by the Applicant therefore served to increase links to Glascoed Nature Reserve and adjacent ancient semi-natural woodlands to the north and west. The Applicant went on to explain that depending on factors such as the siting of the access and the final footprint of the OnSS and the Temporary Construction Compound (TCC), as well as the results of pre-construction surveys, then alternative options may be deemed more appropriate. For example it may make more sense to reinstated historic east-west links by creating hedgerows east-west through the TCC area rather than elsewhere, which would serve to reinstate historic field boundaries.
- 2.81 The Applicant considered that net benefits for biodiversity would be achieved through the provision of enhancement measures that provide new benefits for biodiversity in addition to sufficient mitigation and compensation. The Applicant advised that it had confirmed with NRW in December 2021 that its proposals on mitigation, compensation and biodiversity quantum were agreed and met relevant policy requirements. Taken in line with the lack of legislative or policy requirement for a metric-based approach, the Applicant submitted that this agreement was sufficient to confirm that this was not needed in order to demonstrate that AyM would deliver net benefits to biodiversity.
- 2.82 CA for OnSS and associated mitigation and enhancement
- 2.83 The Applicant confirmed that provisions in the revised NPS EN-5 (2.3.3) included a section on CA which means that CA may be required for substations and associated mitigation and enhancement. The Applicant noted that there was a key policy driver where new development was being provided to include ecological benefits. This therefore provides the Applicant the opportunity to deliver these benefits.
- 2.84 The Applicant however acknowledged the continuing obligation on them to acquire the minimum amount of land necessary for delivery of the AyM project. If no agreement can be reached, the Applicant advised that it should only take what is necessary, and this will

be driven by detailed design and the LEMP. The Applicant therefore confirmed that it needed to retain the ability to acquire Plots 416 and 417 but will be subject to this continuing obligation.

### Blight

- 2.85 The Applicant confirmed that the issue of blight had been raised by an affected party with a Category 2 interest and, further to this, the Applicant was seeking confirmation from DCC that the land affected was public highway. The Applicant noted that this is an important point as the land in question is intended to be used as a visibility splay, and thus any existing obligation to keep the area clear of obstacles would ensure that there was no interference with existing rights. The Applicant advised that it had undertaken assessments of the area and it anticipated that there would be no Category 3 claim arising as a result of those works.
- 2.86 The Applicant explained the operation of the statutory blight provisions which only apply where a residential property has been identified for acquisition and the owner can require early purchase of their property by the acquiring authority. As there are no residential properties within the Order Land the blight provisions do not apply.

## **3 Site specific representations by APs**

### Classification of land at Faenol Bropor

- 3.1 The Applicant submitted that the Agricultural Land Classification of the 30 hectares within FB had been designated as being the same quality as that covered by the OnSS area. The Applicant advised that it had undertaken a recent detailed survey in order to assess the quality themselves. This assessment highlighted that much of the land was now designated as 3(b).

### Continued pursuit of Voluntary Agreements

- 3.2 The Applicant advised that it will continue to seek voluntary agreements with landowners where possible. The Applicant also stated that acquiring land by voluntary agreement was in the interests of both the Applicant and the landowners as relying on CA powers is a much blunter, cruder tool and not an ideal scenario for anyone. From the Applicant's perspective, it noted that the use of CA powers required the expenditure of both time and money which they would rather avoid where possible.
- 3.3 The Applicant stated that in recent projects voluntary agreements had been secured with almost every interested party prior to commencement of the development (e.g. Triton Knoll where agreements were reached with all landowners, and the Sofia project in which an agreement was reached with all but one landowner).
- 3.4 The Applicant noted that a great deal of time and money is invested in securing voluntary agreements, and thus it is not in their interests to waste progress made simply because CA powers are approved.

### Screening

- 3.5 In response to a request for surety on ongoing screening requirements, the Applicant advised that it understands the impact of the OnSS works and thus the importance of effective screening and landscaping. The Applicant therefore highlighted that these matters had been secured as a key element of the OLEMP.
- 3.6 It was further explained that the Design Principles Document (REP7-028) now included a description of the design guide which will be consulted upon by members of the public and the local authority. The Applicant stated that this consultation would take place post-consent of the DCO and prior to final submission to DCC.



- 3.7 The Applicant also noted a further amendment to the OLEMP which provided for maintenance of screening and landscaping.

#### Work 30A

- 3.8 Further to a query by a land agent, the Applicant confirmed that use of the land under Work 30A was not uncertain, and it was noted that this land had the potential to be included in the final design for OnSS mitigation. The Applicant submitted that the reason for not including these measures elsewhere had been clearly set out, in that the site provides opportunities for ensuring connectivity of habitats and the ability to deliver biodiversity net gain and enhancement as required by policy.

#### Works on Glascoed Road

- 3.9 In light of a question raised by an affected party, the Applicant explained that where land is not taken, there is potential to make a compensation claim based on nuisance caused. The Applicant advised that no impacts of this kind or magnitude are anticipated, however it acknowledged that compensation could be sought should any arise.

### **4 Statutory Undertakers**

- 4.1 The Applicant confirmed that it is not intending to extinguish any rights of SUs but has included drafting in the dDCO which would mean it retains the ability to do so if needed and section 138 of the PA 2008 would be satisfied on the basis of PPs included in the DCO.

#### SPEN

- 4.2 The Applicant confirmed that the PPs for SP Manweb had been agreed with SPEN and joint statement to confirm this would be submitted.

#### Network Rail Infrastructure Limited

- 4.3 The Applicant noted that it is continuing active discussions with Network Rail in relation to the protective provisions. There are still some outstanding points of disagreement but overall these are generally minor and it is anticipated that agreement can be reached before the end of the examination.
- 4.4 If no agreement is reached, the Applicant intends to submit its preferred set of PPs. If an agreement is reached after the end of the examination, the Applicant will submit the agreed set of PPs to the SoS to take into consideration.

#### Dwr Cymru / Welsh Water

- 4.5 The Applicant confirmed that the PPs have now been agreed with Dwr Cymru / Welsh Water and will be included in the final version of the dDCO.

#### National Grid Electricity Transmission

- 4.6 The Applicant noted that it is continuing active discussions with National Grid in relation to the protective provisions but a key area of disagreement is in relation to the interaction between the AyM project and National Grid's proposed works to the Bodelwyddan substation. The Applicant advised that it was essential that it could deliver its project within the Order limits without requiring a separate consent or compulsory purchase order. The Applicant advised that discussions are ongoing between both solicitors and engineers with a view to reaching an agreed position as soon as possible.
- 4.7 If no agreement is reached, the Applicant intends to submit its preferred set of PPs. If an agreement is reached after the end of the examination, the Applicant will submit the agreed set of PPs to the SoS to take into consideration.

#### Rhyl Flats Offshore Wind Farm

- 4.8 The Applicant advised that it had been engaged with the representatives of Rhyl Flats and that discussions on the PPs were fairly advanced aside from the issue of wake loss. The only other outstanding issue, the Applicant noted, was the detail of the indemnity provision.
- 4.9 The Applicant acknowledged that the parties' positions on wake loss had been clearly established. The Applicant noted that this issue fundamentally came down to a question of interpretation of the NPS and whether in the absence of specific wording the SoS would interpret the policy as requiring AyM to undertake a wake loss assessment for RFWF.
- 4.10 The Applicant considered that if the NPS was intended to place a financial burden on developers as a result of wake loss, then this would be stated explicitly in the policy. Whilst the Applicant acknowledged that there had been wake loss agreements in the past, it highlighted that these have only ever been concluded a voluntary basis. As such, the Applicant advised that should this be required for AyM, it would be the first offshore wind decision to do so.

#### North Hoyle Offshore Wind Farm

- 4.11 The Applicant advised that the parties had been seeking to deal with their outstanding issues by way of a cable crossing agreement, on which some progress had been made. The Applicant stated that it was common for cable crossing agreements to be finalised after the close of the Examination.
- 4.12 The Applicant noted that a revised draft of the Agreement had recently been provided by North Hoyle's solicitors, although there remained some fundamental points at issue. Generally the Applicant advised that this came down to financial issues, including the degree of reciprocity in the agreement. The Applicant noted that the parties would continue to work on negotiating outstanding points.

#### Wales and West Utilities

- 4.13 The Applicant noted that no objection or submissions have been made by Wales & West to the AyM Examination and Wales & West have previously confirmed to the Applicant that a private agreement will be sufficient to ensure their interests are adequately protected. However, the Applicant received a late request for a bespoke set of PPs for W&W to be included in the DCO. The Applicant and Wales & West are in discussions to agree a set of PPs.

### **5 Crown Land**

- 5.1 The Applicant provided an update on matters relating to Crown land and the consent required under section 135 of the PA 2008.
- 5.2 In respect of Plot 257, the River Clwyd Crossing, the Applicant noted that it was awaiting draft documents. It was noted that terms had been proposed by TCE during the course of a meeting on 3 February 2023, and the Applicant thought these to be broadly agreeable.
- 5.3 The Applicant confirmed that discussions and negotiations on the section 135 consent remained ongoing. However, it did not see any impediment to this being granted. The Applicant further advised that it is actively seeking the consent of TCE but in the event this is not in place before the end of the Examination, the Applicant will update the SoS when the s135 consent is in place.

### **6 Funding Statement**

- 6.1 The Applicant briefly summarised updates to the Funding Statement (REP7-030).

- 6.2 Since submitting the DCO application, the Applicant noted two minor updates which had been made to the project's Order limits, reducing the area of land affected by the project. Given the small scale of these changes in terms of land area affected, the Applicant advised that the removal of Plots 26 and 69A had a negligible effect on the overall assessment.
- 6.3 As noted in the negotiations document, the Applicant explained that discussions and negotiations with affected landowners and occupiers had been ongoing. As part of these commercial discussions, detailed information had been provided by affected landowners' or occupiers' appointed agents in relation to recent comparable land sales in the area. The Applicant advised that this had given rise to an increase in the costs associated with the acquisition of land and rights required for the AyM project. It was noted that the initial assessment of land values had been based upon desktop research using resources such as HM Land Registry.
- 6.4 The Applicant then noted that the assessment had been further updated to reflect the increase in the Bank of England's base rate of interest, from 2% to 4% during the lifetime of the assessment. At the time of drafting the initial assessment, the Applicant advised that the rate was 1% with current rates running at 4%. Although difficult to predict rates through to 2030, the Applicant explained that 4% was thought a reasonable compromise between potential future fluctuations in the rate.
- 6.5 Further, the Applicant advised that the reassessment of business losses had been assisted by the provision of detailed financial return information for a number of diversified farm businesses. It was explained that this information had not been available at the time of the original assessment as claimants had been understandably cautious about releasing commercially sensitive information to others, including the Applicant's land agents. This information has however now enabled a more accurate analysis of the potential business loss liability which could arise as a result of the AyM project.
- 6.6 In regard to the net assessment of third party professional fees, the Applicant stated that this had now been reduced as a result of a rationalisation in the number of transactions, particularly around the various named factions of the WG. The Applicant noted that this had been achieved through discussions with landowners and other affected parties.
- 6.7 The estimated cost of delivering the project was now stated to be £2.26 billion, with property costs accounting for £15.4 million.
- 6.8 The Applicant also advised that RWE, whose current assets stood at £220 billion, owns 60% of the joint venture developing the AyM project.
- 6.9 The Applicant advised that it would provide further details on the Funding Statement and funding position in writing.



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