

**WRITTEN SUMMARY OF SP MANWEB'S (THE "APPLICANT") ORAL CASE PUT AT THE
ISSUE SPECIFIC HEARING ON THE DEVELOPMENT CONSENT ORDER**

2 OCTOBER 2015

1. INTRODUCTORY REMARKS

- 1.1 This note summarises the Applicant's case as presented at the Issue Specific Hearing on the Development Consent Order held on 2 October 2015 at Denbigh Town Hall, Crown Lane, Denbigh (the "**IS Hearing**").
- 1.2 The note follows the structure of the Agenda for the Issue Specific Hearing on Friday 2 October 2015 ("**the Agenda**"). Where an item was discussed at the IS Hearing that was not on the Agenda it has been marked as an "Additional Agenda Item".
- 1.3 Reference in this note to "undertaker" means the "Applicant" and vice versa.

2. INTRODUCTION OF THE PARTICIPATING PARTIES

- 2.1 Richard Griffiths (Pinsent Masons LLP) spoke on behalf of the Applicant.
- 2.2 Oral representations were made from the following Interested Parties:
- 2.2.1 Mr Iwan Jones;
 - 2.2.2 Mr John Mars Jones;
 - 2.2.3 Mr Dewi Parry (resident of, and representing the owner of, College Farm);
 - 2.2.4 Mr Ceri Thomas (Planning Officer at Conwy County Borough Council);
 - 2.2.5 Mr Ian Weaver (Planning Officer at Denbighshire County Council);
 - 2.2.6 Mr David Hatcher (of Natural Resources Wales ("**NRW**")); and
 - 2.2.7 Mr Giles Cannock (Counsel, King's Chambers, representing NRW).

3. INTRODUCTORY REMARKS

- 3.1 In response to the Examining Authority stating that it was likely to accept "Option B", being a non-material amendment application submitted by the Applicant, Mr Griffiths requested confirmation as to when a decision would be made on whether or not to accept Option B. He noted that the Examining Authority would appreciate that notices have to be published in the press in accordance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.
- 3.2 The Examining Authority indicated that the Applicant would be in receipt of a letter regarding Option B early the week commencing 5 October 2015.

4. ITEM 14.1: TO ENABLE THE PANEL TO UNDERSTAND THE DIFFERENCES BETWEEN THE DRAFT DCO SUBMITTED WITH THE APPLICATION AND THE SECOND EDITION OF THE DRAFT DCO SUBMITTED FOR DEADLINE 2

- 4.1 In response to a request from the Examining Authority, the Applicant undertook to provide a broad summary of the changes to the draft DCO in the version submitted at Deadline 2 in comparison with the application version.

- 4.2 Mr Griffiths noted that the covering letter submitted with the draft DCO for Deadline 2 includes a summary of those changes which should also assist, and that a tracked changed version of the draft DCO was also submitted at Deadline 2.
- 4.3 Mr Griffith summarised the key changes to the draft DCO as follows:
- 4.4 In Part 1, Article 2 (Interpretation):
- 4.4.1 A new definition has been inserted of "operate", in response to the Examining Authority's First Written Question 12.3. The definition is used in Article 6 of the draft DCO (Installation and operation of the authorised development), and also in Requirement 18 in Schedule 2 of the draft DCO (Decommissioning).
- 4.4.2 The new definition of "operate" has had a consequential requirement for a new definition to be inserted of "distribution".
- 4.4.3 Revised plan references have been included where required in response to a request from the Examining Authority.
- 4.4.4 The definition of "building" has been deleted and replaced with a new definition of "structure". This is used in Article 26 of the draft DCO in relation to temporary use of land for carrying out the Proposed Development.
- 4.4.5 The definition of "Order land" has been amended as it should reflect the fact that the compulsory acquisition powers would also relate to land "required to facilitate or is incidental to" the authorised development (in respect of that part of the underground cable from the Terminal Point to the highway).
- 4.5 In relation to Part 2 (Principal Powers):
- 4.5.1 In Article 7(2) (Benefit of the Order) words have been inserted in response to the Examining Authority's First Written Question 12.4. The amendment confirms that the provision to the effect that the DCO is solely for the benefit of the undertaker (Article 7(1)) does not apply to the extent that the DCO confers express benefits on other parties, such as statutory undertakers, owners and occupiers of land and other parties affected by the authorised development.
- 4.5.2 Article 13 (Temporary prohibition or restriction of use of streets and public rights of way) has been amended in response to a request from Denbighshire County Council, so as to provide for a 2 week notice period to be given to the relevant street authority prior to any alteration, diversion, prohibition or restriction of the use of streets or public rights of way identified in Schedule 6 (Temporary Prohibition or Restriction of the Use of Streets or Public Rights of Way).
- 4.5.3 Article 14 (Traffic Regulations) has been amended to clarify that the traffic regulations provisions set out therein apply only in relation to vehicular traffic on a public highway.
- 4.5.4 There has been a minor amendment to Article 19 (Compulsory acquisition of rights) and Article 22 (Private Rights) and Article 28 (Statutory undertakers) to clarify that the undertaker may create rights over land.
- 4.5.5 In Article 21, the word "land" in the heading has been deleted and replaced with "rights" so it reads "Time limit for exercise of authority to acquire rights compulsorily".

- 4.5.6 Article 26 (Temporary use of land for carrying out the authorised development) applies to the whole of the Order land. It was noted that it is usual for a temporary use article, such as Article 26, to apply to all of the land required to enable the undertaker to go onto land to carry out micro-siting, so as to minimise any compulsory acquisition of rights in the event that the Applicant does not reach private agreement. Accordingly, whilst the Applicant is continuing to negotiate voluntarily, Article 26 would enable the Applicant to erect permanent structures (i.e. on the blue land where the 132kV Overhead Line would be located). For this reason, amendments have been made to Article 26(1)(c). In the event that Applicant did not serve notice of entry under section 11 of the Compulsory Purchase Act 1965 or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981 or has otherwise acquired the land (by voluntary agreement), then the Applicant must restore the land.
- 4.5.7 The former Article 38(2) (Procedure in relation to certain approvals etc.) has been deleted as it is already covered by the Article.
- 4.6 Schedule 1 (Authorised Development) of the draft DCO has been amended in light of comments from the Examining Authority, such that the word "restore" has been changed to "replace" in relation to trees and other vegetation removed during construction.
- 4.7 Mr Griffiths noted that various amendments have been made to Schedule 2 (Requirements) of the draft DCO, and indicated that these would be discussed in detail later in the IS Hearing in line with the Agenda, and so would not be summarised at this stage.
- 4.8 Schedule 7 of the draft DCO has been amended to refer to the imposition of restrictions and restrictive covenants on land in the context of compensation.
- 4.9 Schedule 8 (Land of which temporary possession may be taken) of the draft DCO has been revised to bring it into line with the descriptions of the each of the land parcels contained in the updated Book of Reference.
- 4.10 In Schedule 9 (Protective Provisions) of the draft DCO, protective provisions have been inserted for the benefit of various statutory undertakers. Mr Griffiths noted that the protective provisions relating to BT (Part 1) and Dwr Cymru Cyfyngedig (Part 2) are now in their agreed form, and that discussion on the protective provisions relating to NRW (Part 3) form part of ongoing discussions over the precise wording of Article 32 (Disapplication of legislative provisions) of the draft DCO, and how this interrelates with Schedule 9.
- 4.11 Schedule 10 (Procedure for discharge of requirements) of the draft DCO has been amended in response to comments from the Relevant Planning Authorities regarding the time for discharge of Requirements, and the drafting has now been agreed with those Relevant Planning Authorities.
5. **ITEM 14.2: TO REVIEW AND EXAMINE THE DRAFT DCO, ARTICLE BY ARTICLE, IF NECESSARY, INCLUDING, BUT NOT NECESSARILY LIMITED TO THE FOLLOWING ARTICLES:**
- 5.1 **Article 2 (Definitions)**
- 5.2 It was noted that definitions had already been covered in Mr Griffiths' summary of changes to the draft DCO.

- 5.3 **Article 4 – should this provide wording to the effect that the Order would provide for maintenance "up to the end of the decommissioning phase"?**
- 5.4 The Examining Authority queried whether Article 4 (Maintenance of the authorised development) should authorise maintenance up to the end of the decommissioning phase of the authorised development. Mr Griffiths confirmed that the next version of the draft DCO will include the wording requested by the Examining Authority.
- 5.5 The Examining Authority also queried whether Article 4 is a standard article or whether the issue is covered under the Electricity Act 1989, and asked whether Article 4 was in fact required in the draft DCO. Mr Griffiths confirmed that Article 4 is a standard article, which follows the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and is required in the draft DCO, noting that it is not an unusual provision.
- 5.6 **Article 5 – should there be a maximum downward limit of deviation?**
- 5.7 The Examining Authority queried whether there should be a maximum downward limit of deviation inserted into Article 5 (Limits of Deviation) of the draft DCO. Mr Griffiths noted that limits of deviation are common in linear projects to give undertakers the necessary flexibility to undertake the authorised development. Mr Griffiths noted that in terms of limits of deviation in Article 5, the downward limitation refers to any extent as may be found to be "necessary or convenient", and that this is taken from Article 5 of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. Mr Griffiths explained that it was not possible to provide a downward limit for inclusion in the draft DCO because until the undertaker was onsite and had undertaken ground investigations, it was not known how deep the foundations for the authorised development might be. Mr Griffiths explained that foundations were likely to be around 2.5m below ground level ("**bgl**"), but that in very poor ground conditions they might be required to be 3m bgl or more, and on this basis it would be unreasonable to apply a downward limit of deviation. Mr Griffiths noted that a similar approach has been adopted on the National Grid (King's Lynn B Power Station Connection) Order 2013 and the National Grid (North London Reinforcement Project) Order 2014 and so there is precedent for the use of this wording in the context of network infrastructure.
- 5.8 **Additional Agenda Item: Article 6(2)**
- 5.9 The Examining Authority indicated that the Panel members had discussed the issue of the import and export of electricity via the authorised development in the context of the use of "operate" in Article 6(2) of the draft DCO. In this context it appeared to the Examining Authority that the definition would enable the undertaker to use the overhead electric line for whatever purposes were necessary for the network, and not necessarily solely for the export of electricity. The Examining Authority requested confirmation of how this would sit with the description of the Proposed Development in terms of exporting electricity from the Wind Farms to centres of use via the substation, and queried whether electricity would be able to run in both directions along the overhead electric line. The Examining Authority queried how this sat with provisions in the draft DCO where there is a reference only to export, and not to import of electricity.
- 5.10 In response, Mr Griffiths stated that Schedule 1 of the draft DCO does not describe the authorised development as only exporting electricity from the identified wind farms to the substation at St Asaph. There is no reference in Schedule 1 to where the electricity is derived from or which way down the line the electricity would be running.
- 5.11 The term "operate" is defined in Article 2(1) by reference to "distribution", which refers to the conveying of electricity from a generating station to a substation. Mr Griffiths confirmed that in the context of the Proposed Development (i.e. the authorised development) the electricity could be distributed up to the substation at St Asaph, or it could be distributed in the opposite direction. Mr Griffiths also noted that the Proposed

Development would become part of the electricity distribution network operated by the Applicant in England and Wales once completed.

- 5.12 Mr Griffiths confirmed that the Applicant would review the terms "operate" and "distribution" to ensure that they were clear in their meaning.
- 5.13 The Examining Authority noted that there was no definition of "use" in the draft DCO. Mr Griffiths noted that as far as he is aware, "use" has not been defined in any made DCOs in respect of overhead lines. Mr Griffiths confirmed that if "use" was not defined in the draft DCO it would fall to be interpreted in accordance with the Interpretation Act 1978. The Examining Authority noted that this might mean the dictionary definition of the word "use".
- 5.14 **Additional Agenda Item: Article 10**
- 5.15 The Examining Authority noted that Articles 10(2)(c) and 10(2)(f) of the draft DCO would allow access and visibility splays to be installed without the prior authority of the appropriate Highway Authority, and queried whether field gate accesses would fall under Article 10 or Article 12 of the draft DCO.
- 5.16 Mr Griffiths noted that Article 10 (Power to alter layout, etc., of streets) would give the undertaker powers to make amendments to the layout of streets, if required, to facilitate the construction of the authorised development. In practice, Mr Griffiths confirmed that this would amount to the creation of accesses into fields along the highway network (as identified in Schedule 3 of the draft DCO), including the potential lowering of grass verges. Mr Griffiths explained that whilst Article 10 provided the undertaker with the power to make these access amendments to the layout of streets, the undertaker would not be able to carry out those amendments until the design of the accesses had been approved by the relevant highway authority under Requirement 9 (Highway works). Requirement 9 prevents the undertaker from constructing or altering any permanent or temporary means of access to a highway until the relevant highway authority has approved the design and layout of the means of access.
- 5.17 Regarding Article 12 (Construction and maintenance of new or altered means of access), Mr Griffiths explained that the Article provides for the undertaker to maintain the restoration of any accesses for 12 months following their restoration, after which the responsibility would pass to the relevant highway authority where the land is public highway or the private landowner where the land is private.
- 5.18 Mr Iwan Jones noted that some landowners may want field accesses to remain and queried whether there was scope for the restoration works not to be carried out.
- 5.19 Mr Griffiths stated that Article 10(3) covered Mr Jones' point, as it states that "unless otherwise agreed in writing" the accesses are to be restored. Therefore, the landowner would simply need to liaise with the undertaker.
- 5.20 **Articles 13-16 – to understand whether the two Local Authorities in which the development would be situated are satisfied with the wording of these?**
- 5.21 Mr Thomas confirmed in response to an enquiry from the Examining Authority that Conwy County Borough Council had raised no objection to Articles 13 - 16.
- 5.22 Mr Weaver noted that Denbighshire County Council's Highways Officer had been absent from work for some time, and noted that the drafting had already been changed to accommodate the Council's concerns. Mr Weaver undertook to confirm Denbighshire County Council's position in writing when the Highways Officer returned to work.

- 5.23 **Article 18 – should this include an obligation for the applicant to make good the locations of the trial holes and other surveys?**
- 5.24 The Examining Authority queried whether Article 18 (Authority to survey and investigate the land) should include an obligation for the Applicant to restore and make good the locations of the trial holes and other surveys. Mr Griffiths confirmed that this would be reflected in the next version of the draft DCO submitted at Deadline 3.
- 5.25 **Additional Agenda Item: Article 19**
- 5.26 The Examining Authority raised the point that in relation to rights and powers of compulsory acquisition there did not appear to be an Article in the draft DCO that expressly prevents the compulsory acquisition powers in the draft DCO from being exercised over Crown land. The Examining Authority noted that in its experience, normally DCOs would have a separate Article on rights and powers of compulsory acquisition in respect of Crown land, and wondered whether such wording would be suitable for use in the next revision of the draft DCO.
- 5.27 Mr Griffiths explained that the Applicant would not be using the compulsory acquisition powers in respect of Crown land. Mr Griffiths explained that Article 19(1) of the draft DCO provides that the undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in the Book of Reference. The Book of Reference expressly excludes the Crown land from the description of the land over which rights are to be created and imposed. Mr Griffiths therefore confirmed that Article 19 was not engaged in relation to any Crown land.
- 5.28 The Examining Authority raised an issue in relation to section 135 of the Planning Act 2008 and specifically whether the two parts of that section are covered in the letter issued by NRW on behalf of the Welsh Government in order to provide the necessary consent required to be provided under that section. The Examining Authority queried whether consent was still needed in relation to either or both of those two parts of section 135, noting that notwithstanding the negotiation of the lease for land at the southern end of the 132kV Overhead Line route, there appears to still be a need to override certain easements over Crown land.
- 5.29 In response, it is the Applicant's position that "Crown land" in section 135(1) should be interpreted to mean land in which the Crown has an interest. Therefore, Crown land is to be interpreted so that it is co-extensive with the interest that the Crown has in that land. For example, where the Crown interest is limited to the mines and minerals, it is only where the powers of compulsory acquisition relate to that interest that the Crown authority would need to provide consent under section 135(1) (provided that interest is being held by another person). As SP Manweb is not seeking to acquire any rights or impose any restrictions on Crown land, where that interest is held by another person, not being the Crown authority or a person holding the interest on behalf of the Crown authority, it is considered that Section 135(1) does not apply.
- 5.30 Section 135(2) is, however, engaged and accordingly a letter of consent has already been obtained from NRW acting on behalf of the Welsh Ministers. A draft consent letter was in agreed form with the Crown Estate, but the Applicant had requested that the letter remain in draft pending the Examining Authority's decision on Option B. Once this decision has been made, then the Crown Estate will issue its consent covering Option A and, should it be accepted, Option B. The letter from NRW would need to be "refreshed" should Option B be accepted into the examination.
- 5.31 The Examining Authority indicated that it was still trying to understand the relevance of section 135(1) of the Planning Act 2008 in the context of the Proposed Development.

- 5.32 Mr Griffiths undertook that the Applicant would put together a written note explaining the legal position in relation to section 135 of the Planning Act 2008. It was agreed that this note would be a joint note from the Applicant and NRW.
- 5.33 The Examining Authority noted in relation to compulsory acquisition that Mr Westmoreland-Smith had previously said that permanent rights were being sought for all of the Proposed Development but that these would fall away once construction had finished. The Examining Authority requested clarification as to how such permanent rights would fall away, and queried whether temporary rights might be better for landowners.
- 5.34 Mr Griffiths explained that the rights would not fall away in a property law sense. However, once construction is complete then the construction only rights (effectively the Class 2 Rights) would be 'spent' after the construction phase, since they can only be exercised in respect of the authorised development. Equally, once the authorised development has been decommissioned, then the rights to install, maintain and operate the authorised development (the Class 1 Rights) would be 'spent' as they too are only in respect of the authorised development.
- 5.35 Mr Griffiths stated that in terms of relinquishing or surrendering the rights from a property law perspective, then SP Manweb would need to enter into, for example, a deed of surrender. Mr Griffiths confirmed that the Applicant, having heard the concerns of landowners, was considering options for various drafting solutions should it need to use the compulsory acquisition powers in the Order in the event that voluntary agreements are not reached. Such a solution may be, for example, an Article or Requirement providing that once the right is 'spent', a deed of surrender of the right would be entered into by the Applicant to formally surrender the right in law.
- 5.36 **Additional Agenda Item: Article 26**
- 5.37 The Examining Authority noted that some of the land that the Applicant would wish to take temporary possession of under Article 26 (Temporary use of land for carrying out the authorised development) appears as if it is for the temporary construction compound and other types of land such as tree planting areas, and indicated that the Panel could not understand why the Applicant would need temporary possession of these areas of land.
- 5.38 Mr Griffiths outlined the purpose of Article 26. Article 26 enables the undertaker to go onto both the land identified in Schedule 8 and also the remainder of the Order land in order to carry out the works identified in Schedule 8 and the works listed in Article 26(1)(b)-(d). This power is not a compulsory acquisition power, rather it is a power that enables the undertaker to have access to the land temporarily so that it can:
- 5.38.1 micro-site the authorised development and therefore ultimately limit the extent of the exercise of the compulsory acquisition powers; and
- 5.38.2 continue to negotiate with landowners in order to try and reach voluntary agreement, whilst not impeding the construction timetable.
- 5.39 The Article provides for the restoration of the land before the undertaker gives up possession unless the undertaker has either used the compulsory acquisition powers or reached voluntary agreement in respect of the land. Mr Griffiths emphasised that Article 26 should therefore be viewed favourably.
- 5.40 Mr Griffiths acknowledged that during the Issue Specific Hearings, landowners were concerned over the use of compulsory acquisition powers. In recognition of this, Mr Griffiths stated that the Applicant is looking at whether it can place more reliance on Article 26 and reduce the creation of rights under Article 19, particularly in respect of construction. However, it was emphasised that the Applicant must not impede the

project and be left in a position of not having the requisite rights to construct, operate and maintain the authorised development, including planting.

- 5.41 The Examining Authority referred to Article 26(1)(d), which refers to Column 3 of Schedule 8, which states the same thing for every land parcel, namely "construction", which has a wide meaning. The Examining Authority queried whether those descriptions should be more specific to each of the particular land parcels.
- 5.42 Mr Griffiths indicated that the Applicant is looking at Schedule 8, and that if it is able to reduce the rights required then Schedule 8 would become more detailed and site specific, detailing which parcels of land are for access and which are for construction. Mr Griffiths stated that it would be unlikely that this exercise would be complete for Deadline 3, and so any revisions to Article 26 and Schedule 8 would likely come in a subsequent version of the Order, but before the next round of Hearings.
- 5.43 **Article 32 – should the legislation that is listed in this article be disapplied and does the draft protective provision to be included in the second edition of the draft DCO provide sufficient comfort for NRW to agree to the disapplication of the Water Resources Act 1991?**
- 5.44 Mr Cannock indicated that NRW and the Applicant were actively considering Article 32 which relates to the disapplication of legislative provisions. Mr Cannock indicated that NRW and the Applicant would do their best to reach agreement, and that the key issue was whether NRW would be prepared to give its consent in light of section 150 of the Planning Act 2008, part of which is inevitably influenced by the extent to which NRW considers that the protective provisions are adequate. Mr Cannock indicated that he did not think that these points had implications for the wider process of reviewing the draft DCO, and that the issue was very much a matter of form rather than substance. Mr Cannock reassured the Examining Authority that lawyers were engaged by both NRW and the Applicant, and that there was no reason why this matter would not be resolved soon.
- 5.45 Mr Weaver noted that Denbighshire County Council and the Applicant had exchanged e-mails regarding Article 32, and that the Council was seeking advice and would seek to conclude agreement on the wording in time for Deadline 3.
- 5.46 Mr Cannock noted that he understood that section 109 of the Water Resources Act 1991 may be revoked and replaced as part of the review of the Environmental Permitting (England and Wales) Regulations 2010. Mr Cannock noted that transitional provisions may be required as a result and suggested that this was something both he and the Applicant could consider for further iterations of the draft DCO.
- 5.47 **Article 32(c) requests the disapplication of s23 of the Land Drainage Act, have the two LAs agreed this in the SoCG?**
- 5.48 **Article 32(d) requests the disapplication of s66 of the Land Drainage Act in relation to the provisions of any byelaws which require consent or approval for the carrying out of works. Please could the applicant clarify why this is requested as it did not appear to be included in the answer to ExA12.7?**
- 5.49 Mr Griffiths confirmed in response to a request from the Examining Authority that in relation to the Land Drainage Act 1991, the protective provisions would be made for the benefit of relevant planning authorities as well as NRW, and confirmed that the Applicant would amend the protective provisions to be applicable to the relevant planning authorities for purposes of the Land Drainage Act 1991. The two relevant planning authorities had no concerns over this.
- 5.50 In terms of byelaws, as it has not been possible to obtain the byelaws, the Applicant is unable to identify specific byelaws in the drafting. The Applicant has requested the byelaws from NRW and these are currently awaited.

6. TO EXAMINE THE WORDING OF SCHEDULE 1 - AUTHORISED DEVELOPMENT

- 6.1 It was noted by the Examining Authority on returning from recess that one member of the Panel (Mr John Lloyd Jones) would unfortunately not be able to sit on the Panel for the remainder of the IS Hearing due to having to leave for unforeseen circumstances.
- 6.2 The Examining Authority noted that the number of kilometres specified in Schedule 1 did not appear to add up and requested that this be checked for consistency.
- 6.3 The Examining Authority also requested the Applicant refer to the bund that would be sited in the construction compound (Work No. 4).
- 6.4 The Examining Authority noted that Conwy County Borough Council had raised in its Local Impact Report alternative wording for paragraph 1B of Schedule 1 to the draft DCO.
- 6.5 Mr Thomas confirmed that Conwy County Borough Council would request that two areas of the Proposed Development be undergrounded namely at the crossing under the A543 and at the area around Berain. Mr Thomas confirmed the Council's request that the provisions in the draft DCO be amended so that the overhead electric line excludes those two sections.
- 6.6 Mr Griffiths explained that as has been heard during the Issue Specific Hearings, impacts assessed at the two locations do not trigger the need for undergrounding of the electric line. Mr Griffiths referred to the landscape and visual impact tests in NPS EN-5 and the historic environment tests in NPS EN-1, and noted that the test of serious concern or substantial harm have not been met, for the reasons already expressed at the Hearings this week. Accordingly, there would be no justification for undergrounding at the crossing under the A543 and at the area around Berain.
- 6.7 The Examining Authority noted that discussions at the IS Hearing were without prejudice, and that the Panel had already heard all of the arguments regarding undergrounding of the electric line. The Examining Authority queried whether, if the Examining Authority considered that the arguments fell in favour of undergrounding sections of the electric line, the Applicant considered that it would be practicable and deliverable to do so. The Examining Authority emphasised the need to consider what Conwy County Borough Council have put forward, and to look at all options, and queried whether the draft DCO could incorporate two elements of the line being undergrounded as requested.
- 6.8 Mr Griffiths indicated he would set out the legal position on this issue, as follows:
- 6.8.1 If the Examining Authority proposed undergrounding part of the Proposed Development, then it would need to grant consent for the undergrounding element.
- 6.8.2 Section 31 of the Planning Act 2008, states that development consent is required for development to the extent that the development is or forms part of a nationally significant infrastructure project. In this case, the nationally significant infrastructure project is the above ground electric line running from Clocaenog Forest to the Terminal Point. However, should an element of undergrounding be introduced along that route for mitigation reasons, then that element of undergrounding would be "part of" the nationally significant infrastructure project. As was made clear in the Secretary of State's decision on Swansea Bay Tidal Lagoon, facilities linked to mitigation should be included in the Order as "part of" the nationally significant infrastructure project.

6.8.3 Accordingly, for undergrounding to be considered by the Examining Authority, the application before the Examining Authority would need to include undergrounding at the locations identified by Conwy County Borough Council. In addition:

- (a) the Applicant would need to consider from a technical perspective whether an underground cable could be accommodated within the Order limits as drawn for the 132kV Overhead Line or whether additional land would be required; and
- (b) undergrounding requires terminal poles and, should the Order limits be able to accommodate the cable, installing an underground cable would be through agricultural fields which would generate a need for the Environmental Statement to assess these new landscape and visual impacts and land management impacts amongst others.

6.8.4 It was noted by Mr Griffiths that there would need to be an Option C put forward by the Applicant to cater for any undergrounding of the overhead electric line in the locations proposed by Conwy County Borough Council.

7. **ADDITIONAL AGENDA ITEM: REQUIREMENT 18 SCHEDULE 2**

7.1 Mr Griffiths noted that a decommissioning Requirement had now been included in the draft DCO as Requirement 18. The Examining Authority queried whether it was intended to remove below ground infrastructure associated with the poles in the context of decommissioning the authorised development. Mr Griffiths confirmed that the foundations of the poles would be removed and that the Applicant would clarify the definition of "decommissioning and restoration plan" to make this clear. The Examining Authority agreed this was appropriate.

7.2 Mr Cannock indicated that NRW's preliminary position was that in relation to decommissioning, there was a tension between NRW and the landowner, insofar as the landowner might want infrastructure which is underground on their land removed during decommissioning, whereas it might be better for the environment or any natural habitats for the infrastructure to be left in situ. Mr Cannock indicated that NRW may want to consider this further in terms of the detailed requirements at decommissioning. Mr Cannock submitted that this could form part of the CEMP or Ecological Management Plan, noting that there was a difference between infrastructure in hedgerows and infrastructure within open fields in this context. Mr Cannock noted that it may be that NRW's concerns can be addressed by it being a consultee on the decommissioning and restoration plan proposed under Requirement 18.

7.3 The Examining Authority noted that this seemed reasonable. Mr Griffiths confirmed that NRW should be consulted on the decommissioning and restoration plan when it is submitted to the relevant planning authorities for approval and that this amendment would be made to the draft DCO.

8. **ADDITIONAL AGENDA ITEM: REQUIREMENT 3(2)**

8.1 The Examining Authority noted that Requirement 3(2) sets maximum and minimum heights for the poles, and referred back to Schedule 1, where the reference is to 19m, emphasising the need to have consistency.

8.2 Mr Griffiths confirmed that there is no inconsistency, as Schedule 1 refers to the whole pole length, including foundations. Approximately 2.5m of the pole would be below ground, hence Schedule 1 refers to 19m pole heights. Requirement 3 refers to above existing ground level pole heights. The limits of deviation Article, Article 5, enables the undertaker to deviate from the authorised development in Schedule 1 by 2m in height upwards. Paragraph 2.3.10 of the Environmental Statement (Examination Library

Reference APP-093) confirms that the 2m limit of deviation has been assessed on top of the pole height of 16.4m.

9. **TO EXAMINE THE DRAFT REQUIREMENTS IN THE DCO INCLUDING:**
- 9.1 **the use of the term "substantially in accordance with" in requirements and how this can be defined**
- 9.2 The Examining Authority indicated that it would not cover this point as legal advice had helped it to understand how that phrase is used and the Panel is now satisfied with the wording.
- 9.3 **whether all tailpieces have now been removed from the requirements?**
- 9.4 The Examining Authority noted that there were still "tailpieces" in two of Requirements, namely Requirement 3(1) (namely "and as may be amended by approval ...") and in Requirement 16, which it referred to as a bigger "tailpiece".
- 9.5 Mr Griffiths stated that the only true "tailpiece" was in Requirement 11(3), which was to be deleted, and that Requirement 16 is not a "tailpiece" and will be dealt with later in the IS Hearing. Requirement 3(1) links into Requirement 16.
- 9.6 **whether Requirement 4 should specify the details that are to be provided in the written scheme including phasing of stages (are stages to be carried out concurrently or chronologically) and timetable for each stage of construction work to be completed?**
- 9.7 Mr Griffiths noted that Requirement 4(a) – (c) detailed what the scheme for phasing of stages would cover, providing options for single and multiple phases. Mr Griffiths noted that this Requirement relates to management of the discharge of the Requirements. For example, one stage could be constructing the construction compound, with the construction of the remainder of the authorised development being another stage. This division would enable the Applicant to discharge the Requirements relating to the construction compound first to enable the construction compound to be prepared, whilst the Applicant works with the relevant planning authorities to discharge the Requirements relating to the remainder of the authorised development.
- 9.8 Mr Thomas stated that Conwy County Borough Council had no concerns about the amendments made to Requirement 4, but that it did have concerns about the syntax of the opening sentence. Mr Thomas noted that the same phraseology also appears in other Requirements, and begins "no authorised development must commence until...". Mr Thomas explained that the difficulty was that it does not prohibit development commencing in advance of approval. In his view it says that the Applicant is not obliged to carry out the development, but it does not say that it cannot be carried out.
- 9.9 Mr Griffiths confirmed that this Requirement is meant to operate as a prohibition, and that the Applicant understands Conwy County Borough Council's concerns. Mr Griffiths noted that the draft DCO is a statutory instrument and that Parliamentary draftsmen insist on a particular style of drafting. Mr Griffiths confirmed that the Applicant is looking at variations to the wording such as "must not commence any stage...". Mr Griffiths confirmed that the Applicant would look at alternative options that would satisfy drafting convention.

- 9.10 **whether details of hard landscaping should be included in Requirement 5 and whether landscaping provisions should be carried out in full accordance with the landscape management plan and EcMP, with details only submitted to the LPA for approval were they to deviate from the approved details**
- 9.11 The Examining Authority queried whether the Applicant considered it worthwhile to incorporate hard landscaping into Requirement 5 to capture any walls within hedgerows and also any fences.
- 9.12 Mr Griffiths responded that the Applicant does not consider this necessary, noting that the landscaping requirement under Requirement 5 relates to new landscaping and not to the reinstatement of elements removed during construction to enable the authorised development to be constructed. If the Applicant has to remove a fence or wall, that fence and wall would be replaced through the CEMP, secured in Requirement 13. Mr Griffiths referred to paragraph 2.10.1 of the CEMP (Examination Library Reference REP1-082) but acknowledged that the drafting in the CEMP would need to be revised to make it clear that hard boundary features would be reinstated.
- 9.13 **the proposed maintenance regimes for landscaping, where are these to be provided and secured**
- 9.14 **if Requirement 5 is to be changed, Requirement 6(1) would need to be reworded accordingly**
- 9.15 **should replacement planting details be included in the Landscaping scheme, in which case should this be incorporated into Requirement 5?**
- 9.16 The Examining Authority noted that the 5 year period specified for maintenance regimes for landscaping had been removed from Requirement 6 and that it understood that discussions were ongoing in relation to landowner involvement in the landscaping proposals, and that this would be reflected in the next draft DCO to be submitted at Deadline 3.
- 9.17 Mr Griffiths confirmed that the Landscaping Management Plan (Examination Library Reference APP-139) refers to a 5 year maintenance period for landscaping, but that the Conwy County Borough Council Local Impact Report had referred to certain areas potentially requiring a longer period, so the reference to 5 years had been removed from Requirement 6. As the Landscaping Management Plan must be approved by the relevant planning authorities, which includes the maintenance regime and the number of years, it is considered that this amendment satisfies the Council's concerns. Mr Thomas confirmed that Conwy County Borough Council was pleased that the 5 year requirement had been removed.
- 9.18 Mr Thomas indicated that he could not see a reference to the submission of the monitoring reports requested in Conwy County Borough Council's response to the Examining Authority's First Written Questions. Mr Griffiths indicated that paragraph 4.13 of the Landscaping Management Plan secures the requirement to provide a monitoring report, and so there is no need to refer to this in Requirement 6. Mr Thomas confirmed that on the basis that there is a requirement in the Landscaping Management Plan to provide a monitoring report, it is not necessary to include it in Requirement 6.
- 9.19 Mr Griffiths confirmed that Requirements 5, 6 and 7 would be reviewed and amended following the Issue Specific Hearings during the week. It has been heard that landowners want to approve any "new" trees that are proposed to be planted when reinstating hedgerows and trees that have been taken out for construction purposes. Mr Griffiths stated that the Applicant will review the Requirements and make it clear which requirement relates to the Order land coloured dark green (the new planting), which requirement relates to the Order land coloured yellow and dark green (planting

in the construction area) and which requirement relates to the Order land coloured yellow (reinstatement planting).

9.20 **should Requirement 9 include a mechanism for consulting the Department of Transport of the Welsh Government and any relevant highway authority, as suggested by DCC?**

9.21 Mr Weaver confirmed that Denbighshire County Council is now satisfied with revised the wording in Requirement 9.

9.22 Mr Thomas confirmed that Conwy County Borough Council is now satisfied with revised the wording in Requirement 9.

9.23 **in Requirement 10 are the hours of working proposed realistic and should weekend/bank holiday working only be permitted if it agreed in writing with the LPA prior to the commencement of works for that stage?**

9.24 The Examining Authority queried whether Requirement 10(3) should be amended to refer only to Broadley's Farm.

9.25 Mr Griffiths confirmed the following:

9.25.1 in relation to concerns raised by Interested Parties regarding the use of artificial lighting, the Applicant is not proposing to use artificial lighting except at Broadley's Farm and a Requirement to this effect will be included in the revised DCO (with an exception to apply in the case of emergency or to satisfy health and safety requirements); and

9.25.2 Requirement 10(3) will be amended to refer only to Broadley's Farm.

9.26 **should Requirement 11 include a time limit for the completion of investigations and risk assessments and for work to cease in that area until all contamination has been rectified?**

9.27 The Examining Authority noted that a requirement to consult with NRW had been included in the draft DCO, and queried whether the relevant planning authorities were now satisfied with Requirement 11. The Examining Authority also noted that the tail piece at the end of Requirement 11(3) would be deleted as stated earlier by Mr Griffiths.

9.28 Mr Weaver confirmed that Denbighshire County Council had no further comments to make and is satisfied with Requirement 11.

9.29 Mr Thomas confirmed that Conwy County Borough Council had no comments.

9.30 **should Requirement 12 be changed to include an obligation on the applicant to consult with Welsh Government and the relevant highway authorities prior to submitting details to the LPA?**

9.31 The Examining Authority noted that it understood Requirement 12 would be amended to reflect the fact that some Local Authorities do not have a county archaeologist. Mr Griffiths confirmed that the Requirement would be amended to delete the reference to a County Archaeologist and refer instead to the relevant planning authorities.

9.32 The Examining Authority queried whether the same should apply in relation to Requirement 13, which refers to a County Ecologist. Mr Griffiths confirmed that the same amendment would be made.

9.33 **should Requirement 13 include additional details to be included in the CEMP and traffic management plan such as the matters identified by DCC in their LIR**

Table A and should the applicant consult NRW, Welsh Government and relevant highway authorities prior to submitting the details for approval?

- 9.34 Mr Weaver confirmed that Denbighshire County Council had held prior discussions with the Applicant regarding the wording of Requirement 13, and was now happy with the approach adopted.
- 9.35 Mr Thomas confirmed that Conwy County Borough Council had no comments on Requirement 13.
- 9.36 The Examining Authority noted in relation to Requirement 13(1)(b) that text had been deleted but that the remaining text did not make sense.
- 9.37 Mr Griffiths confirmed that the word "incorporating" should not have been deleted and would be reinstated in the version of the draft DCO to be submitted at Deadline 3.
- 9.38 Mr Cannock noted that the amendments made to Requirement 13 in terms of consultation with NRW on the CEMP addressed NRW's concerns.
- 9.39 In relation to maintenance more generally, Mr Cannock accepted that some maintenance actions would not be of concern to NRW, such as undertaking inspections. However, at the other end of the spectrum were actions like removal and reconstruction of the authorised development, in respect of which NRW may wish to have some involvement. Mr Cannock suggested that appropriate wording to achieve this might read something along the lines of "no maintenance will commence unless consultation has taken place with NRW, and a Maintenance Management Plan has been submitted to and approved in writing with the relevant planning authority". Mr Cannock suggested that this would enable NRW not to apply any additional requirements in the context of simple repair and maintenance activities, but to allow them to have some oversight in the case of very significant maintenance works.
- 9.40 The Examining Authority noted that it could understand that the Applicant might have concerns with this approach, and requested that NRW table draft wording for the Applicant to consider and provide comments as to the workability of such a requirement. The Examining Authority considered that this could be looked at in the context of the powers of the Applicant under the Electricity Act 1989.
- 9.41 Mr Griffiths confirmed that the Applicant had to be careful not to constrain itself too much, and noted that there is precedent for the current mechanism.
- 9.42 **Additional Agenda Item: Requirement 14**
- 9.43 The Examining Authority queried whether the Applicant intended to insert the working hours and working days when piling could take place. Mr Griffiths indicated that this would constitute duplication of Requirement 10(2), which sets out the hours and days when piling can take place. Mr Griffiths confirmed that there was therefore no need to refer to working hours and working days again in Requirement 14 itself.
- 9.44 **whether Requirement 16 is necessary and would this give the applicant the ability to modify the scheme in such a way that the development would no longer be in line with the scheme as assessed in the Environmental Statement (ES)?**
- 9.45 The Examining Authority noted that the way the Panel reads Requirement 16; it understood that it would give the Applicant the ability to modify the authorised development in such a way that it would no longer be in line with Proposed Development as assessed in the Environmental Statement.
- 9.46 Mr Griffiths responded that Requirement 16 does not allow the applicant to modify the authorised development in such a way. Mr Griffiths indicated that the Applicant would

like to table an amendment to Requirement 16 in the form of a deletion of the reference to "the parameters..." in line 2 of Requirement 16(1). Mr Griffiths noted that the purpose of Requirement 16 is to allow necessary flexibility to the Applicant following the detailed design process. Mr Griffiths indicated that the class of documents falling into Requirement 16 are approved plans in the form of section drawings and compound layout drawings as well as those documents that the relevant planning authorities approve when discharging the Requirements.

- 9.47 Mr Griffiths gave the example of the span lengths for the poles included in the section drawings, noting that the precise location of the poles may move slightly during detailed design, and so they may end up being installed otherwise than in strict accordance with the section drawings. Requirement 16 enables the relevant planning authority to approve the final pole locations. Mr Griffiths also gave the example of the construction compound, the precise layout of which might change after the contractor is appointed to undertake the construction of the authorised development. In addition, the Applicant requires the flexibility to amend those documents that the relevant planning authorities approve themselves, which would be no different to the non-material application process under the Town and Country Planning Act 1990.
- 9.48 Mr Griffiths further noted that any amendments to the CEMP or approved plans or drawings must satisfy Requirement 16(2), which requires the Applicant to show that any proposed amendments do not give rise to any materially new or materially different environmental effects. The ultimate decision maker would be the relevant planning authorities, who must be satisfied of this matter if they are to approve the application. Mr Griffiths noted that this mechanism had been found acceptable in the context of the Progress Power (Gas Fired Generating Station) Order 2015, and emphasised that the wording does not enable the authorised development to be amended outside the scope of Schedule 1 of the draft DCO or the scope of the Environmental Statement.
- 9.49 Mr Thomas confirmed that the relevant planning authorities are familiar with exercising similar powers when approving non material amendments to planning applications, and so Conwy County Borough Council would not resist what has been proposed by Mr Griffiths.
- 9.50 Mr Weaver confirmed that Denbighshire County Council had already discussed Requirement 16 with the Applicant, and had nothing to add.
- 9.51 The Examining Authority requested that the Applicant consider the practicalities of working with Requirement 16 and whether there was a need to tighten Requirement 16(2) to provide for details to be submitted to the relevant planning authorities for review.
- 9.52 Mr Thomas again noted that the onus would be on the relevant planning authority to be satisfied that any proposed amendments were not material, and that it would be open to them to request further clarification in respect of those matters, noting again that this was not a new procedure to the relevant planning authority.
- 9.53 Mr Cannock indicated that NRW would request that the relevant planning authorities consult with NRW prior to coming to a conclusion as to whether there are materially new or materially different environmental effects resulting from a proposed amendment to the authorised development.
- 9.54 Mr Thomas confirmed that Conwy County Borough Council would in any event consult with NRW. Mr Griffiths confirmed that the Applicant was happy for wording to be inserted into Requirement 16 to require consultation with NRW by the relevant planning authorities.

- 9.55 **draft Requirement 18 on decommissioning. Does this give IPs sufficient comfort regarding the removal of the poles and cables and the restoration of the route of the development at the end of the life of the windfarms?**
- 9.56 The Examining Authority queried whether the word "preceding" was the correct word to use in all instances where it is used in Requirement 18, noting that in some cases it appeared to be used in circumstances where it should be referring to events going forward rather than looking backwards. The Examining Authority also queried whether the decommissioning requirement in Requirement 18 worked in practice.
- 9.57 Mr Griffiths indicated that he would not repeat the Applicant's position on decommissioning, which had already been set out. Mr Griffiths noted that in Condition 13 of the recommended planning permission for the Llandinam 132kV Overhead Line, a copy of which has been provided to the Examining Authority, the Inspector did not refer to a particular generating station. In the case of the draft DCO, Mr Griffiths indicated that the Applicant had tried to be more transparent regarding decommissioning, and summarised the process envisaged by Requirement 18 in detail:
- 9.57.1 under Requirement 18(1), where electricity is no longer being generated by and transmitted from the Wind Farms, a requirement is triggered for the undertaker to produce a report setting out whether the authorised development will continue to be in operation (e.g. because another generating station has been connected to it which required it to remain in operation), and if so the identity of the generating station(s) from which it is distributing and exporting electricity;
- 9.57.2 if the authorised development will or is likely to remain in operation over the next 12 month period, the report must include a mechanism providing for the undertaker to update the relevant planning authorities as to the use and operation of the authorised development; the relevant planning authorities must approve the mechanism proposed; and the undertaker must comply with the mechanism;
- 9.57.3 if the authorised development is not likely to be in operation over the next 12 month period, the undertaker must on the 1 year anniversary of the date of the report submit a further report to the relevant planning authorities confirming the use and operation of the authorised development over the following 12 month period; if the authorised development has ceased to operate for a continuous period of 12 months the undertaker must submit a decommissioning and restoration plan to the relevant planning authorities, to be approved within 3 months of the date of submission; alternatively, if the authorised development has been operational during the 12 month period the report must include a mechanism providing for the undertaker to update the Local Planning Authorities as to the use and operation of the authorised development; the Local Planning Authorities must approve the mechanism proposed; and the undertaker must comply with the mechanism.
- 9.58 Mr Griffiths confirmed that Requirement 18(1) was precise in terms of the Wind Farms referred to therein, and noted that there is a new planning permission going through the system in respect of Brenig Wind Farm, meaning that the Applicant proposed to amend the wording of Requirement 18 to refer to the Wind Farms by reference to their current planning permission, and any future planning permission for the same project.
- 9.59 The Examining Authority noted the compressed timescales for drafting the version of the draft DCO submitted at Deadline 2, and requested that the Applicant review the wording of Requirement 18 in light of discussions.
- 9.60 The Examining Authority noted that under Requirement 18(4) the Applicant had 24 months within which to decommission the authorised development and restore land

affected by it, whereas the Proposed Development was only expected to take 16 months to construct. The Examining Authority queried where the 24 month period came from, and whether it was appropriate in the circumstances.

9.61 Mr Griffiths confirmed that the time specified related to the restoration works on the land rather than the removal of the poles. Mr Griffiths confirmed that the removal of the overhead electric line itself will be a fairly short process. In terms of the restoration plan, this may contain work that will take a longer period, hence the period of 24 months specified in Requirement 18(4).

9.62 The Examining Authority noted that the way Requirement 18 is drafted, the authorised development could be unused for up to 3 years before the requirement to decommission is triggered.

9.63 Mr Griffiths confirmed that the Applicant would revisit the timescales to address the Examining Authority's concerns, and that the Applicant would consider splitting out the decommissioning and restoration elements within the timescale specified for decommissioning and restoration.

9.64 **resourcing implications for LPAs and NRW**

9.65 The Examining Authority indicated that it did not intend to discuss resourcing implications for the relevant planning authorities and NRW which had been briefly discussed at earlier Hearings.

9.66 **whether private water supplies need to be protected by a requirement**

9.67 Mr I Jones raised the issue of agri-environment schemes, and queried whether there was any way of requiring the Applicant to indemnify landowners participating in such schemes against any losses arising from a failure to meet cross compliance requirements. The Examining Authority indicated that this could not be done in a Requirement in the draft DCO, but that the way to capture this would be through the CEMP.

9.68 Mr Griffiths confirmed that this was correct, and had been discussed at the Hearing the previous day. The Applicant is considering drafting on how it can assist landowners regarding cross-compliance obligations for inclusion in the CEMP. Regarding losses, Mr Griffiths said that financial loss would be a matter for compensation.

10. **TO UPDATE THE PANEL ON THE SITUATION REGARDING AGREEMENT OF THE PROTECTIVE PROVISIONS IN SCHEDULE 9**

10.1 Mr Griffiths and Mr Cannock confirmed in response to a request from the Examining Authority that NRW and the Applicant were continuing to seek agreement on the protective provisions for NRW in Schedule 9, and that drafting work to achieve this was ongoing.

10.2 Mr Griffiths reminded the Examining Authority that the protective provisions in favour of BT and Dwr Cymru Cyfyngedig were in agreed form.

11. **TO EXAMINE WHETHER THE TIMESCALES GIVEN IN SCHEDULE 10 (1) (2) AND 10(2)(2) REGARDING THE PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS ARE REASONABLE OR WHETHER THE TIMESCALES GIVEN HERE SHOULD BE OMITTED**

11.1 Mr Weaver confirmed that Denbighshire County Council has discussed the issue of timescales in the context of the procedure for discharge of requirements by the relevant planning authorities with the Applicant, and that both Conwy County Borough Council and Denbighshire County Council were satisfied with the revised wording.

- 11.2 Mr Cannock confirmed that NRW's position on Schedule 10, paragraph 1(3) is that it was satisfied with the timescale of 21 days for responding, and that in the absence of any response, NRW is deemed to have consented to the application. However, Mr Cannock indicated that NRW would like the Applicant to consider adding the words "unless otherwise agreed in writing", so as to give greater flexibility. Mr Griffiths indicated that the Applicant would agree to this.