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**Second Round Written Questions - Appendix 12.3 - DCC Response
E-mail Response to DCC**

Commentary in relation to highways clauses in the draft Development Consent Order

SP Manweb requires approval in accordance with **Requirement 9** (Schedule 2 to the draft Order) before any works to construct or alter any access to a highway may be commenced.

In submitting plans for approval, SP Manweb anticipates that dialogue would begin in relation to any agreement required between SP Manweb and DCC under **Article 16**. SPM anticipates that agreements under Article 16 will be put in place early and will form the basis for co-operation between DCC and SPM in delivery of the works and any necessary restoration following completion of construction.

Article 10(1) sets out the powers for works to streets that SP Manweb may undertake. These are defined with reference to the schedules to the Order and the submitted works plans and Access Rights of Way plans. These schedules show that SP Manweb is not carrying out any works to a public right of way, and all the works on DCC maintained highways are to create/improve accesses into fields on a temporary basis (which then have to be restored under **Article 10(3)**). SP Manweb does not consider that there is any objection to the inclusion of these works in the Order.

Article 10(2) sets out a general power, but this power can only be exercised with the consent of DCC (see **article 10(4)**).

Article 11 is not understood to be at issue, and replicates street works powers that SP Manweb already holds as an electricity distribution licence holder.

Article 12(1) requires that any temporary accesses constructed by SP Manweb must be maintained by SP Manweb until restoration works are completed. Where restoration works are completed, they must be completed to the reasonable satisfaction of DCC. SP Manweb must then maintain those works for a period of 12 months before they vest in the highways authority, unless otherwise provided for by an agreement under Article 16 (see **article 12(3)**).

SP Manweb has proposed amendments to Article 12 to address concerns that works should not automatically vest in DCC 12 months after construction. Those changes are shown in red/strike through on the attached copy of Articles 10-16, and will ensure that SPM remains responsible for works for the whole construction period until restoration is satisfactorily completed (or unless otherwise agreed with DCC).

Article 13 is not understood to be at issue, and provides that any temporary diversion or restriction on PROWs set out in the schedules may only be undertaken on giving DCC two weeks' notice. Any other temporary diversion or restriction can only be undertaken with DCC's consent.

Article 14 is also not understood to be at issue, and provides that SP Manweb may make temporary traffic orders on giving no less than 4 weeks' notice to DCC, and advertising any orders in the manner specified by DCC.

Articles 13 and 14 do not prevent an agreement between SP Manweb and DCC under which any relevant orders could be made by DCC under DCC's usual processes.

Article 15 – this is not understood to be a point of contention, and grants powers for other accesses within the order limits to be permitted. This would also be subject to approval under **Requirement 9**.

In relation to the specific comments raised by Highways Officer Adrian Wells by email on 29 October 2015:

Article 12

DCC comment: If they chose to enhance the surface of a public right of way to facilitate access I do not accept we should then become responsible for the maintenance of the enhanced highway after 12 months. This should be a matter between the developer and landowner.

SPM Response: SPM has not identified any PROWs that it needs to enhance to facilitate access for construction. This is clear from the schedules. In the event that SPM decides that it does, then it would need to obtain the express consent of DCC under Article 10(4). Through this agreement, DCC could ask SPM for whatever maintenance that it requires. Therefore no amendment can be made as DCC's concerns cannot be born out in the order.

DCC comment: This could be an example where in order to achieve access to a pylon site they need to drive along a public footpath with a grass or other natural vegetation and earth surface and in order to do this they found it necessary to improve the load bearing surface of the ground by stoning the path. They cannot make such improvements without our consent as Highway Authority.

SPM Response: The order as drafted would require SPM to obtain consent to carry out any such works under article 10(4) as the order does not authorise any upgrade works to footpaths.

DCC comment: Nothing in this order would enable them to take on that capacity from the Highway Authority, as far as Public Rights of Way are concerned, of approving highway improvements along with subsequent automatic transferring of end maintenance responsibility without our agreement.

Therefore I would prefer they should not improve the surface of cross field paths unless there is no alternative and at the end of the works we will not accept maintenance responsibility for the new surface other than in line with our existing obligations for the existing unsurfaced path.

SPM Response: See above. Should SPM require this ability, it will need the express consent from DCC under article 10(4) and in obtaining that consent, DCC can request whatever maintenance requirements it wants from SPM. The order does what DCC requires.

Article 13

DCC comment: I note the intention that were SP Networks to acquire powers we would retain capacity to veto any proposal for a traffic restriction or prohibition of use order within 56 days of receiving notice. It is likely the impact of these works on the path network will have minimal impact due to the limited number of paths involved crossing the work corridor. The linear nature of such a large development will require that adequate alternative local provision will be maintained where access rights are restricted and that alternative routes are both commodious and do not expose pedestrians or equestrians to traffic. Given the small number of paths involved with this scheme and low levels of useage in this area if the Council, as Streetworks Authority, was to support this proposal I would not disagree in as far as it applies to the Rights of Way Network although I am confident we would make any necessary order required by the scheme within normal timescales.

SPM Response: No amendment required as DCC is happy with Article 13.

Article 14

DCC comment: The comments about traffic regulation would be the same as those above.

SPM Response: No amendment required as DCC is happy with Article 14.

Extract from draft DCO

Schedule 2, Requirements

Highway works

9.—(1) No work to construct or alter any permanent or temporary means of access to a highway to be used by vehicular traffic must commence until, following consultation with the relevant highway authority, written details of the design and layout of that means of access has been submitted to and approved by the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the details approved under subparagraph (1).

DCO Articles 10-16

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph **Error! Reference source not found.** but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by the reducing the width of any kerb, footpath, footway, cycle tract or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain crossovers passing place(s);
- (e) carry out works for the provision of parking places and unloading areas; and
- (f) execute any works to provide or improve sight lines.

(3) Unless otherwise agreed in writing with the street authority, the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) carry out all necessary works required for the exercise of article 10 (power to alter layout, etc., of streets);
- (f) place and keep during the construction and installation of the authorised development scaffolding on any verge to a street;
- (g) removing or using all earth and materials in or under any street; and
- (h) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g).

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the Electricity Act 1989⁽¹⁾.

(4) In this article “apparatus” has the meaning given in part 3 of the 1991 Act.

(5) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered means of access

12.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and must be maintained by and at the expense of the undertaker ~~for a period of 12 months from completion and from the expiry of that period by and at the expense of the relevant highway authority~~ **until such time as the works are restored in accordance with article 10(3).**

(2) Those parts of each means of access specified in Part 4 of Schedule 5 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from the date on which the undertaker no longer requires use of the access for the construction of the authorised development and from the expiry of that period by and at the expense of the relevant street authority.

(3) Those restoration works carried out pursuant to article 10(3) identified in Part 2 of Schedule 5 (access) must be completed to the reasonable satisfaction of the relevant highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the relevant highway authority **(unless an agreement has been entered into between the undertaker and the relevant highway authority under article 16 in relation to the maintenance of these restoration works).**

(4) Those restoration works carried out pursuant to article 10(3) identified in Part 3 of Schedule 5 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

⁽¹⁾ 1989 c.29.

(6) For the purposes of a defence under paragraph (5), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets and public rights of way

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way within the Order limits and which has been temporarily altered, diverted, prohibited or restricted under the powers conferred by this article.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by a temporary alteration, diversion, prohibition or restriction under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1) the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets and public rights of way specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of the use of streets or public rights of way) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street or public right of way specified in paragraph (4) without first providing the street authority with at least two weeks' notice of such alteration, diversion, prohibition or restriction; and
- (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.

(6) If a street authority which receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, it is deemed to have granted consent.

(7) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act.

Traffic regulation

14.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary

for the purposes of or in connection with construction of the authorised development, at any time prior to the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) authorise the use as a parking place of any road; and
- (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers of article 13 in respect of prohibition or restrictions relating to vehicular traffic only on a road and paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 or paragraph (1) of this article—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)⁽²⁾.

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

(5) If the traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

Access to works

15. The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

16.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street under the electric line authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 12(1) (construction and maintenance of new or altered means of access).

⁽²⁾ 2004 c.18. There are amendments to this Act not relevant to this Order.

- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.