



## Brechfa Forest Connection ("the Project")

The purpose of this note is to reprise the Applicant's position concerning statutory undertakers and the application of s.127 Planning Act 2008.

The Applicant has made reference to DCLG guidance "*Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land*" ("the Guidance") which states at Annex A Paragraph 13;

*"Section 127(2) of the Planning Act places restrictions on the **compulsory acquisition of land held by statutory undertakers for the purposes of their undertaking. Where the land falls into the description set out in that section and a statutory undertaker makes a representation, the Secretary of State will need to be satisfied that:***

- *The land can be **purchased and not replaced without serious detriment** to the carrying on of the undertaking; or*
- *If purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking."*

The Applicant wishes to be clear that no land in the ownership of statutory undertakers will be acquired. The Book of Reference indicates that only Class 2 Rights (acquisition of rights by the creation of new rights) are sought over Plot B50 (37 square metres or thereabout of land lying to the east of Afon Gwili, Abergwili) which is in the ownership of Dwr Cymru. The Project will only interact with other statutory undertakers assets where it will cross them and Protective Provisions have been agreed in this respect. The Guidance states at Paragraph 14;

*"Section 127 (5) places restrictions on the compulsory acquisition of rights over statutory undertakers' land where new rights over that land are created. If the circumstances in that subsection apply the Secretary of State will need to be satisfied that:*

- ***The rights can be purchased without any serious detriment** to the carrying on of the undertaking, and;*
- *Any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker."*

Dwr Cymru have not submitted any relevant representations or holding objections to the Project. The intention of the Applicant is to use Plot B50 for access and this will not cause any serious detriment to the carrying on of Dwr Cymru's undertaking. They have settled a legal agreement to agree Protective Provisions which is in the process of being signed and completed. Heads of Terms have been signed in respect of an easement for the benefit of the Applicant over Plot B50. The Applicant considers that, based on Dwr Cymru not objecting to the Project and having settled terms that no serious detriment arises. The Secretary of State should therefore be satisfied that the test in Section 127 (5) is met.

Regarding Mainline Pipelines and BT Openreach neither of these statutory undertakers have objected to the Project or made representations. The Book of Reference does not identify any land within their ownership within Order limits.

Wales and West Utilities responded to Deadline 4 (1 February 2016) with a letter to PINS which noted that Wales and West had no apparatus in the area of the 'enquiry' but have provided confirmation on 4 April 2016 that they are satisfied with the Protective Provisions within the DCO. The Book of

Reference does not identify any land within their ownership within Order limits. Therefore under s.127 (1) no objections have been made by any statutory undertaker.

NGET and NGG submitted a letter to PINS on 5 April 2016 withdrawing their relevant representation dated 3 August 2015 and noting that satisfactory Protective Provision arrangements had been concluded. The representation dated 3 August 2015 noted that it was made to protect its position in light of infrastructure identified within or in close proximity of the DCO boundary. The Book of Reference does not identify any land within their ownership within Order limits.

With the exception of Dwr Cymru's ownership of Plot B50 which is considered above, as no land or rights will be acquired over any other statutory undertakers land, neither Section 127 (2) or 127 (5) will be engaged in respect of any other statutory undertaker.

**Osborne Clarke**

**On behalf of Western Power Distribution (South Wales) Plc**

**6 April 2016**