



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

The Clocaenog Forest Wind Farm

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

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Examining Authority

The Examining Authority's findings and conclusions and recommendation in respect of an application for a Development Consent Order for the construction and operation of up to 32 wind turbine generators, with a capacity between 64 and 96 megawatts and overall height (to blade tip) of up to 145 metres, as well as other infrastructure integral to the construction and /or operation of the wind farm at Clocaenog Forest, North Wales.

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File Ref EN010013

- The application, dated 27 March 2013, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 28 March 2013.
- The applicant is RWE Innogy UK Limited (Formerly RWE Npower Renewables Limited).
- The application was accepted for examination on 23 April 2013.
- The examination of the application began on 12 September 2013 and was completed on 12 March 2014.
- The development proposed is the construction and operation of up to 32 wind turbine generators, with a capacity between 64 and 96 megawatts and overall height (to blade tip) of up to 145 metres, as well as other infrastructure integral to the construction and /or operation of the wind farm. These infrastructure and related works include external transformer units, two anemometry masts, a permanent route to the site and between turbines, underground cabling, a substation compound, two civil and one electrical compounds during construction and four borrow pits.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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ERRATA SHEET – Clocaenog Forest Wind Farm – Ref. EN010013

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 12 June 2014

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
Report			
38	4.64	"Pentre-llynCymmer"	"Pentre Llyn Cymmer"
44	4.92	"NRA"	"NRW"
45	4.95	"..a 2 meter buffer zone.."	"..a 2 km buffer zone.."
49	4.112	"..evidence has put forward.."	"..evidence has been put forward.."
50	4.118	"affect"	"effect"
55	4.139	"Whist.."	"Whilst.."
68	4.197	"runoff rates effecting downstream.."	"runoff rates affecting downstream.."
71	4.213	"..property would become.."	"..property that would become.."
89	4.286	"..no grounds for the refusing.."	"..no grounds for refusing.."
92	4.306	"..under section.10 of the.."	"..under section 10 of the.."
93	4.308	"..under section.10.."	"..under section 10 of the.."
100	5.33	"..on the site`s integrity. .The applicant`s.."	"..on the site`s integrity. The applicant`s.."
101	5.37	"..major change in these thresholds that the .."	"..major change in these thresholds, the .."
102	5.41	"..there is may be.."	"..there may be.."
103	6.4	"..injurious affection under P may be made.."	"injurious affection under section 152 of the Planning Act may be made ..."
123	7.86	"..Defence by R28."	".. Defence by R29."

1 INTRODUCTION

- 1.1 On 28 June 2013 I was appointed to be the Examining Authority (ExA) for the examination of this application by RWE Npower Renewables Limited (RWE NRL) for the Clocaenog Forest Wind Farm (CFWF).
- 1.2 The application is for a Nationally Significant Infrastructure Project (NSIP) since it is for the construction of a generating station within section 14(1)(a) of the Planning Act 2008 (PA2008), and it would meet the criteria listed in s15(2) of the PA2008.
- 1.3 The applicant formally changed its name on 31 January 2014 from RWE Npower Renewables Ltd to RWE Innogy UK Ltd¹. It remains the same legal entity. I will refer in this report to the applicant as RWE for ease of reference.
- 1.4 The main events of the examination and procedural decisions taken during the examination are listed in detail in Appendix B.
- 1.5 References in the report to Articles mean the Articles in the recommended Development Consent Order (DCO). Any reference in the text to former numbered Articles mean the Article as numbered in the application draft DCO.
- 1.6 In addition to a number of unaccompanied site visits to see the application site and the surrounding area, I carried out inspections of the site in the company of the applicant and Interested Parties (IPs) on 30 and 31 October, 1 and 28 November 2013².
- 1.7 A total of 277 relevant representations were received from IPs within the statutory period. Of these, 29 representations were in support of the project. In order to enable all those persons interested in the project every opportunity to participate in the examination, I exercised my discretion and accepted late submissions throughout the examination up until it closed on 12 March 2014.
- 1.8 The applicant has agreed Statements of Common Ground (SoCG) with the County of Denbighshire and the County Borough of Conwy Councils, the two local planning authorities for the application site, and with Natural Resources Wales (NRW)³.
- 1.9 In addition to consent required under the PA2008 (the subject of this report and recommendation), the proposed development needs other consents and permits. These are as follows⁴:
 - Electricity Act 1989 – Generating licence under section 6.

¹ WSC_031 Appendix 1

² The Itineraries are at docs ASI_001 and ASI_002

³ SoCG_001 and 002

⁴ AD_158

- Road Traffic Regulation Act 1984 – Temporary restriction of Public Rights of Way under an order for the regulation of traffic.
- Land Drainage Act 1991 - Construction or alteration of culverts.
- Water Resources Act 1991 – Abstraction and/or discharge of water.
- Conservation of Habitats and Species Regulations 2010 - Dormouse licence.

The applicant has initiated negotiations and consultations with the appropriate consenting authority for each of these matters⁵. No reason has been given by any party to the examination to indicate that there would be any impediment to these consents being obtained.

- 1.10 Clocaenog Forest is in the ownership of the Welsh Government (WG). Should the Secretary of State (SoS) decide to grant consent and make a DCO, it would include provisions which apply to Crown Land. Pursuant to s135(2) of the PA2008, this requires the consent of Welsh Ministers as the "appropriate Crown Authority" under s227(5)(b) of the PA2008. That consent was given by means of a letter dated 19 March 2013 signed on behalf of the Welsh Ministers⁶.
- 1.11 The applicant is the UK subsidiary of RWE AG, a major German energy company. Across the UK, RWE operates 17 hydroelectric power projects and 28 onshore wind farms.
- 1.12 An agreement⁷ has been signed by RWE Innogy Limited, The Welsh Ministers, Denbighshire County Council (DCC) and Conwy County Borough Council (CCBC) under s106 of the Town and Country Planning Act 1990. Schedule 1 to that agreement would secure the measures to be identified and approved in the Habitats Management Plan (HMP) and in the Access Management Plan (AMP) in respect of land outside the boundary of the application site; and Schedule 2 deals with measures to protect television reception within the vicinity of the application site. I have taken this agreement into account and given it due weight in making my recommendation.
- 1.13 The former Forestry Commission Wales had a pecuniary interest in the application project and has been merged within NRW. NRW is a statutory consultee on this application. The independence and impartiality of NRW in the application process was called into

⁵ AD_004 Table 1.4

⁶ AS_020

⁷ OD_010

question⁸ in view of the pecuniary interests now held by NRW in the application project.

- 1.14 In response to my Question 7.3⁹ in the first round of questions appended to my Rule 8 letter¹⁰, NRW explained that this perceived risk was addressed when the organisational design of NRW was implemented. All matters relating to commercial dealings are the responsibility of the National Services Directorate (NSD). This is separated from the Operations Directorates (OD) in which the statutory consultee roles and responsibilities sit. The energy team within the NSD acts as agents of the WG and negotiates with developers to ensure that benefit is secured for the people of Wales. The ODs have no role in these negotiations.
- 1.15 In view of the internal processes in place for NRW's role as a statutory consultee, I am satisfied that the pecuniary interest of the NRW does not impinge on the role and responsibilities of NRW as a statutory consultee in this application project.
- 1.16 This report sets out in accordance with s83(1)(b)(i) of PA2008 my findings and conclusions in respect of the application and my recommendation to the SoS under s83(1)(b)(ii) of the PA2008.

⁸ WR_026

⁹ WR_029/RQ_1_010

¹⁰ PD_004

2 MAIN FEATURES OF THE SITE AND THE PROPOSAL

The site

- 2.1 The Clocaenog Forest is located within the Clwyd Hills in North Wales about 13km south of Denbigh and about 10km west of Ruthin, with Bangor some 60km to the north west. It crosses the boundaries between DCC and CCBC. The application site forms a part of Strategic Search Area (SSA) A which was identified in the WG Technical Advice Note (TAN) 8 of 2005 as one of seven locations capable of accommodating large scale wind farm development (>25MW).
- 2.2 As a whole, the Clocaenog Forest covers an area of about 4,231ha. The application site spans approximately 1,581ha of this area, being located along a north south running spine with an altitude of between 380m and 502m Above Ordnance Datum (AOD). An area of land, which includes the Clywedog Reservoir and is not required for the project, is excluded from the application site.
- 2.3 The northern site boundary is 1km south of the B4501 and the site extends some 8km to the south of this. The eastern site boundary is located about 400m west of the River Clwyd at its closest point, and the western boundary is about 2.2km east of Llyn Brenig Reservoir. The forest is managed by NRW on behalf of the WG.
- 2.4 The majority of the land within the application site is currently coniferous forest with some open areas of heather moorland. The Afon Clywedog, Afon Alwen and a number of unnamed tributary streams flow through the north-east and south-west of the development area. There are no settlements within the proposed development area. The location of the application site is shown in Figures 1.1a and 1.1b of the Environmental Statement (ES) ¹¹.
- 2.5 Clocaenog Forest lies between the Snowdonia National Park (SNP) to the west (about 12km from the closest turbine) and the Clwydian Hills and Dee Valley Area of Outstanding Natural Beauty (AONB) to the east (about 9km from the closest turbine). The Jubilee Tower on Moel Famau, the highest hill within the Clwydian Range is some 15km to the east. To the north the landform comprises undulating hills, falling to Colwyn Bay and the Irish Sea. To the south lie the Berwyn range of mountains, separated from Clocaenog Forest by deep valleys such as that of the River Dee.
- 2.6 There are no settlements or dwellings within the boundary of the development area. There are ten dwellings in the immediate vicinity of the site¹², with the closest at some 780m from a proposed wind turbine location. There are no settlements within

¹¹ AD_003

¹² AD_016

2km of the site boundary, and eight between 2km and 5km. Villages and hamlets within 2km and 5km of the site boundaries include Nantglyn to the north, Clocaenog to the east and Clawdd-newydd to the south east.

- 2.7 Two Scheduled Ancient Monuments (SAM) and a single listed building are located within the site. The site is not within any landscape included in the Register of Landscapes of Outstanding Historic Interest in Wales or the Register of Landscapes of Special Historic Interest in Wales.
- 2.8 There are two nationally designated sites, Mynydd Hiraethog Site of Special Scientific Interest (SSSI) and Cefn Rofft SSSI, within a 5km radius of the proposed development area. There are 19 Local Wildlife Sites (LWS) and a further 20 candidate LWS within a 5km radius of the application site.
- 2.9 No World Heritage Sites (WHS) or sites on the Tentative List are situated within visual range of the application site. There are 73 SAMs within 10km of the application site, 826 Listed Buildings, five Conservation Areas, and ten Registered Parks and Gardens. Within 10km of the site there are also three landscapes on either the Register of Landscapes of Outstanding Historic Interest in Wales (CCW, Cadw and ICOMOS UK 1998) or Register of Landscapes of Special Historic Interest in Wales (CCW, Cadw and ICOMOS UK 2001).
- 2.10 One class 3 and three minor unclassified public roads cross the site¹³. There is a public car parking area within the site at Pont Traws-afon south of Nilig on the eastern boundary. Seven public footpaths cross the site and one byway open to all traffic /bridleway¹⁴. Other public rights of way surround the site within the wider Clocaenog Forest.
- 2.11 The site is classified as designated open access land under the Countryside and Rights of Way Act 2000. Cyclists and horse riders are permitted open access by NRW in accordance with current policy.
- 2.12 Water from the site drains into two main surface water catchment areas, the Afon Clwyd catchment to the north and east and the Afon Alwen catchment to the south and west. The only major water body in close proximity but outside the site is the Clywedog Reservoir, which is used as a fishing lake by the Denbigh and Clwyd Angling Club. The reservoir and adjacent land are owned by third parties, but are surrounded by WG land managed by NRW.
- 2.13 Tir Mostyn and Foel Goch wind farm (TMFG) with its 25 wind turbines lies adjacent to the northern part of the site. TMFG and

¹³ AD_016 Figure 7.2

¹⁴ AD_016 Figure 7.3a-c

Wern Ddu wind farms were granted planning permission before the issue of TAN 8 in July 2005. The site of the consented Brenig wind farm comprising 16 turbines lies adjacent to the north west boundary of the site. The locations of further operational and consented wind farms lie beyond 1km from any of the proposed wind turbines¹⁵.

The proposal

- 2.14 Schedule 1 to the submitted DCO defines the Authorised Project. Part 1 to Schedule 1 defines the Authorised Development and Part 2 defines the Ancillary Works. In Part 1, the Authorised Development, Work No 1 comprises up to 32 wind turbines each sited on concrete foundations incorporating hardstanding for cranes, each turbine being fitted with rotating blades and having a height to blade tip of up to 145m and including external transformers located at the base of the turbine. The turbines would be located along the upland plateau which runs from north to south through Clocaenog Forest. Installed capacity would be between 64 and 96 megawatts (MW).
- 2.15 The location for each turbine is identified with a grid reference which is a reference to the centre point of the turbine. Provision is made in Article 6 of the DCO for the power to deviate from the lines or situations shown on the works plan¹⁶ by up to 50m. An example of a typical wind turbine is given¹⁷ as being 100m in height to hub, with a rotor diameter of 90m, giving a height to blade tip of 145m. Each turbine would be of a 3 bladed design, with the nacelle supported by a tapering cylindrical steel tower. A specific turbine model has not been identified in the application, in view of potential changes in technological advancement. The colour proposed for the turbines would be semi-matt pearl grey. An electrical transformer cubicle would be located outside of and adjacent to each turbine base¹⁸.
- 2.16 The foundation for each turbine would cover an area of 22m x 22m. The foundations would be up to 3.5m below the natural ground level where necessary as a result of ground conditions at each location¹⁹. Crane hardstanding areas would be constructed adjacent to each turbine base for the large mobile cranes required to erect the turbines. Each hardstanding would be about 50m x 25m and would be excavated and backfilled with stone and covered with topsoil consistent with the forest floor on completion of the development.
- 2.17 Other components of the development would include -

¹⁵ AD_010 Figure 5.10

¹⁶ AD_185 to AD_192

¹⁷ AD_007 Figure 3.4

¹⁸ The project is described in full in AD_008

¹⁹ AD_007 Figure 3.3

- Work Nos 2a and 2b: underground cabling between turbines and the onsite electricity substation;
- Works Nos 3 and 4: a series of new tracks, existing tracks subject to improvement and widening and public roads subject to widening to include a permanent access route to the site and routes between turbines²⁰;
- Work Nos 5a and b: alternative sites for a substation compound comprising the substation, a building with an enclosed control room, welfare facilities and an external compound;
- Work Nos 6 and 7: two anemometry masts of 100m in height;
- Work Nos 8 and 9: two civil construction compounds;
- Work Nos 10, 11, 12, and 13: four borrow pits for the extraction of stone;
- Work Nos 14A and 14B: alternative locations for a temporary electrical compound to be located adjacent to the onsite electricity substation.

2.18 Ancillary Works in Part 2 of Schedule 1 comprise the landscaping and clearance of vegetation required in connection with Work No 3.

2.19 Alternative options for the site of the substation (Works 5a and b) to provide connection to the national grid are included at the north and at the south within the application site. The final location would depend upon the route chosen for the grid connection by Scottish Power Energy Networks which is the electricity distribution network operator for North Wales. The preferred option for the grid connection is the northern route to connect the CFWF to the St Asaph substation, but the southern route to the substation at Legacy has not been ruled out. The grid connection would be subject to a separate application by the distribution network operator. I deal with this matter later in the report, but there is no requirement for the grid connection to be in place or approved before a consent can be granted, and there are no obvious reasons why the grid connection might not be approved.

2.20 The total area of land which would be permanently occupied by structures and hard surfaces during the operation of the wind farm would be about 12.21ha with an additional temporary land take of about 12.74ha²¹ that would be available for restoration to its original condition in accordance with the Soil and Peat Management Plan (SPMP)²² on completion of the construction. Tree clearance would be minimised through the siting of the turbines within existing open areas; in compartments which were due to be felled prior to construction under the existing Forest

²⁰ Works no 3 and 4 are contained within the application boundary of the site. Separate planning applications will be submitted where necessary for works to roads outside the application boundary.

²¹ Comprising crane hardstandings, construction compounds, and borrow pits.

²² AD_042 para 1.5

Design Plan (FDP)²³; in areas designated by NRW as due for tree clearance within the operational lifetime of the wind farm; or in recently replanted areas.

- 2.21 The application site has a system of existing forest roads and tracks which would be used and improved in accordance with Work Nos 3 and 4 where necessary for access during construction and operation. The improved access tracks would be retained throughout the lifetime of the project for use by maintenance vehicles as well as normal forestry operations²⁴.
- 2.22 The preferred access route to the site would be from just beyond the crossroads with the B5435 at the Bryn Glas Depot on the B4501, entering the northern boundary of the application site on an unclassified road which lies to the east of Llyn Brenig²⁵.
- 2.23 Some off site works would be required to provide a route for the delivery of the turbines as Abnormal Indivisible Loads (AIL). The North Wales Trunk Road Agency (NWTRA) and CCBC have requested that works to the strategic highway should be permanent so that future wind farm development can make use of the same access route. Where necessary, off site highway works would be subject to separate planning applications²⁶.

The pre-construction phase

- 2.24 Pre development tree clearance would be carried out by NRW prior to the commencement of the construction which is expected to take 24 months. Tree clearance is avoided in habitat sensitive areas, and road widening is limited to the minimum possible. The proposal is to minimise tree loss such that the turbines become a part of the forest rather than taking out large areas of forest and replacing the trees with a wind farm. A process of keyhole felling to accommodate the turbines is intended. All felling would be carried out by NRW in accordance with Forestry Industry Best Practice²⁷.
- 2.25 The annual harvesting programme in Clocaenog normally contributes in excess of 16,000m³ to the annual cut in Wales. For the application to progress, pre development tree clearance would result in the export of some 32,000m³ of timber, taken from an area of 222ha required for the project to be constructed, although 24.5ha of this area is currently open ground. Of the construction area, some 116ha could be restocked or allowed to re-establish following construction, and some 76ha could be restocked or allowed to re-establish following decommissioning. Some 30ha would remain permanently cleared to accommodate mitigation

²³ AD_073

²⁴ AD_007 Figure 3.7 shows an overview of the proposed access tracks

²⁵ AD_026 and AD_027 for more details.

²⁶ AD_027 para 12.7.4

²⁷ WSC_036

measures proposed as part of the Habitat Management Plan including open areas which would be managed to provide display sites for Black Grouse²⁸.

- 2.26 NRW intend to review the existing FDP for Clocaenog Forest to take account of the pre-development tree clearance undertaken in preparation for the construction of the CFWF. It is intended that pre-development tree clearance would be incorporated into the annual cut managed by NRW and would form part of the normal tree clearance programme within the forest area such that current production forecast volumes would be maintained. As a result the construction of the CFWF would make no significant difference to the volume of trees removed from the forest given the usual clearance work carried out by NRW.

The construction phase

- 2.27 The construction process would be subject to a Construction Traffic Management Plan (CTMP)²⁹. Prior to the start of any work, consultation with the Department of Transport of the WG and any relevant highway authorities would be required. Detailed approval of the CTMP would then be required by the relevant planning authority, which would be either DCC or CCBC. Approval by the relevant planning authority of a Construction Method Statement (CMS)³⁰ together with a variety of Environmental Management Plans is also required prior to the start of any construction work on the site. These Plans include the following:

- Construction Environment Management Plan (CEMP)³¹
- Waste Management Plan (WMP)³²
- Emergency Response Plan (ERP)³³
- Surface Water Management Plan (SWMP)³⁴
- Soil and Peat Management Plan (SPMP)³⁵
- Borrow Pit Design and Site Restoration Plan³⁶
- Relevant Species Protection Plans (SPP)³⁷

- 2.28 Draft versions of the plans have been the subject of discussion between the applicant and the relevant consultees. Prior to formal submission for detailed approval, consultation with NRW on the contents of the plans would be required, followed by detailed approval for each plan from the relevant local planning authority. The requirements in the draft DCO have been structured to ensure

²⁸ AD_085 Section 5

²⁹ AD_027 (includes outline CTMP)

³⁰ AD_042

³¹ AD_042 App A

³² AD_042 App B

³³ AD_042 App C

³⁴ AD_058 (includes outline SWMP)

³⁵ AD_042 para 1.5

³⁶ AD_042 para 1.5

³⁷ AD_042 para 1.5

that no construction work could begin on the application site before all the plans have been formally approved.

- 2.29 The wind turbines would be delivered to the site as AIL, with up to ten loads for each turbine. A preferred route for delivery to the site from Ellesmere Port is identified³⁸. Other construction traffic movements would follow the most direct route to the site from their origin, but would be restricted to major roads as far as practicable.
- 2.30 The main tasks comprised in the construction process are listed in the ES³⁹, and an indicative construction programme is provided⁴⁰. Construction hours would be 0700 to 1900 on weekdays and 0700 to 1300 on Saturdays. Some extension of the working hours could be required in order to complete critical operations. Deliveries to the site would also be programmed to take place within these hours, apart from the delivery of AIL which may be made at night in order to avoid disruption to road users. However, this would only take place in agreement with the relevant authorities and would be under police escort.
- 2.31 In terms of drainage, no direct discharge points would be introduced by the project to watercourses. A SWMP⁴¹ has been prepared which would make use of Sustainable Drainage Systems (SuDS) to divert existing surface runoff around the construction sites, whilst swales would take water from the construction sites to silt traps/buffer areas or retention ponds for treatment. It is intended to maintain existing run off rates, which would be identified and agreed with NRW before construction work starts. The SuDS would remain for the lifetime of the wind farm to ensure areas of hard standing connected with the wind farm for the 25 year period of its operation would not change the hydrological regime.
- 2.32 After each element of the proposal is constructed there would be a requirement to reinstate the ground surface, and details of reinstatement methods are set out in the outline CMS in Annex 3.1 to the ES⁴². Full details of the construction phase are set out in the ES Chapter 3⁴³.

When operational

- 2.33 The best wind resource in North Wales lies within the upland areas in which the site is located. Indicative wind speeds at 45m height are predicted to be between 7m/s and 7.5m/s for the site⁴⁴. Since

³⁸ AD_008 para 3.14.5.8 with detailed appraisal in AD_027

³⁹ AD_008 para 3.14.1.1

⁴⁰ AD_008 Diagram 3.1

⁴¹ AD_058

⁴² AD_042

⁴³ AD_008

⁴⁴ AD_005 Figure 2.1 and AD_006 para 2.2.3

the turbine hubs would be up to 55m above this height, the project would benefit from higher wind speeds. The wind turbines would be available for generation at all times during the lifespan of the scheme, which is some 25 years, with the exception of maintenance downtime, or any need to avoid ice throw and periods of high wind.

Other Wind Farm Development in TAN 8 SSA(A)

- 2.34 TAN 8 2005 provides technical advice relating to the delivery of Wales' renewable energy and onshore wind energy targets. It also identifies those areas in Wales, which on the basis of research, are considered to be the most appropriate locations for large scale onshore wind farm development (the SSAs). The target figures in TAN 8 are 4 TWh by 2010 and 7 TWh by 2020. Clocaenog Forest is within SSA(A), and its maximum capacity was assessed in a study by Garrad Hassan as being 212MW⁴⁵. This target figure was set by the Welsh Minister for Environment and Sustainable Development in 2011⁴⁶.
- 2.35 There are two wind farms that are operational within SSA(A) with a combined installed capacity of 29.3MW. There are a further three wind farms with planning permission for an installed capacity of 98.5MW which have not been constructed and which are awaiting a joint grid connection with the CFWF.
- 2.36 Tir Mostyn and Foel Goch Wind Farm (TMFG) is an operational scheme located in the north west corner of SSA(A). It has 25 turbines which are 49m to hub and 75m to blade tip. The site for the consented Brenig wind farm lies between the two parts of TMFG, and includes 16 turbines of 60m to hub and 100m to blade tip. To the north of SSA(A), a wind farm proposed at Gorsedd Bran was refused planning permission and dismissed at appeal. This proposal for 13 turbines of 80m to hub and 125m to blade tip was refused permission on issues related to landscape impact and cumulative noise effects⁴⁷.
- 2.37 To the south east of the SSA, Wern Ddu is an operational scheme with four turbines which are 55m to hub and 90m to tip. Derwydd Bach wind farm has consent at the southern end of the SSA for ten turbines of 85m to hub and 120.5m to blade tip. To the south west, Nant Bach is a consented scheme for 13 turbines of 80m to hub and 125m to blade tip.
- 2.38 The wind farms identified above which have been built or which have planning permission are those which have been included in the applicant's cumulative assessments of environmental impacts for the ES.

⁴⁵ AD_009 para 4.6.4.2

⁴⁶ AD_009 para 4.6.4.2

⁴⁷ LIR_001 Appendix 6

3 LEGAL AND POLICY CONTEXT

- 3.1 The legal and policy context for the application is described in the Planning Statement⁴⁸ and in the ES Chapters 1 and 4⁴⁹.

Planning Act 2008, as amended by the Localism Act 2011 National Policy Statements

- 3.2 The SoS must decide the application in accordance with the National Policy Statements (NPS) except to the extent that one or more of subsections (4) to (8) of s104(2) of PA2008 applies. The matters which would inhibit a determination in accordance with the NPSs include a breach by the United Kingdom of its international obligations; a breach by the SoS of any duty imposed by the SoS or any other enactment; where a decision in accordance with the NPSs would be unlawful by virtue of any enactment; where the SoS is satisfied that the adverse impact of the proposed development would outweigh its benefits; or where the SoS is satisfied that any condition prescribed for deciding an application otherwise than in accordance with the NPSs is met.
- 3.3 EN-1 is the NPS for Energy and applies to onshore wind farms generating in excess of 50MW, as proposed in this case. It has effect in combination with the relevant technology specific NPS, which is EN-3 for Renewable Energy Infrastructure.
- 3.4 In addition to the NPSs, s104(2) also requires the SoS to have regard to the Local Impact Report (LIR)⁵⁰ and to any other matters which the SoS considers important and relevant as part of the decision making process.
- 3.5 The following legislation, policy and guidance are in my view relevant and important matters for the determination of this application.

European Requirements and Related UK Regulations

Renewable Energy Directive 2009

- 3.6 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets. The Strategy expects onshore and offshore

⁴⁸ AD_167

⁴⁹ AD_004 and AD_009

⁵⁰ LIR_001 and LIR_002

wind power to provide around 64% of all electricity produced from renewables by 2020.

Habitats Directive (Council Directive 92/43/EEC)

- 3.7 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance.

Birds Directive (Council Directive 2009/147/EC)

- 3.8 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.9 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

***Conservation and Species Regulations 2010 (as amended)
the Habitats Regulations***

***The Conservation of Habitats and Species Regulations 2010
(as amended)***⁵¹

- 3.10 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.

⁵¹ Statutory Instrument 2010 No. 490

- 3.11 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles.
- 3.12 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.13 These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.14 The Directives and the Habitats Regulations are relevant to this application, and the applicant has provided a Report to inform a Habitats Regulation Assessment (HRA) Report⁵². The applicant's HRA identifies the following European sites for inclusion within the assessment:
- River Dee and Bala Lake Special Area of Conservation (SAC)
 - Berwyn and South Clwyd Mountains SAC
 - Llwyn SAC
 - Migneint-Arenig-Dduallt SAC
 - Migneint-Arenig-Dduallt SPA
 - Berwyn SPA
- 3.15 The applicant's HRA report states that "all European sites within 15km of the Application Site boundary have been identified – beyond this distance; significant effects on European sites are unlikely except where direct hydrological connections exist. No European Sites, additional to those within 15km, are hydrologically linked to the Application Site". Information to support this conclusion is provided in the 'Catchment Boundaries and European Designated Sites' Figure as part of the applicant's response to Rule 8 questions⁵³.
- 3.16 The applicant's HRA concludes that there is no likely significant effect on any European Sites and that an appropriate assessment is not required⁵⁴. I return to this matter in Section 5.
- 3.17 Licences in respect of European protected species may be issued where there is no satisfactory alternative and the action authorised by the licence would not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. NRW is the licensing authority in most cases. For works that would affect Dormice, a

⁵² AD_078

⁵³ RQ_1_008 Question 6.3

⁵⁴ AD_078 in particular see Table 9.7; section 10.7.3; and Tables 10.4, 10.5 and 10.6

European Protected Species Licence is required and an Application for a Development Licence for the Dormouse has been produced⁵⁵. There are non-avian and avian species within the application site which are protected under the Habitats Regulations or the Wildlife and Countryside Act 1981. The impacts of the proposed development have been assessed in ES Chapters 9 and 10⁵⁶ and mitigation measures would be secured through requirements in the DCO. I deal with these matters in Section 4 below.

The Environmental Impact Assessment Directive⁵⁷

- 3.18 Environmental Impact Assessment (EIA) is a process to assess the likely environmental effects of a project in order that decision makers may take these effects into account in making their determination. EIA is required in certain circumstances by European law and is implemented in respect of projects requiring development consent pursuant to the PA2008 under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (EIA Regulations 2009)⁵⁸.
- 3.19 The application is for EIA development. It includes an ES in four volumes, comprising a main statement, a non technical summary, figures and a set of 15 technical appendices. I am satisfied that the ES meets the definition given in regulation 2(1) of the EIA Regulations 2009. Additional environmental information was received during the course of the examination in the form of detailed responses from the applicant⁵⁹ and IPs.
- 3.20 The ES and the additional environmental information deal with the environmental effects of the proposed development both during the construction phase and when it is operational. I consider these effects in Section 4 below.
- 3.21 In reaching my conclusions and making my recommendation I have taken into consideration all the environmental information, as defined in regulation 2(1) of the EIA Regulations 2009 (including the ES and any other information on the environmental effects of the development) since the SoS is, where relevant, required to take this information into consideration before granting development consent in accordance with regulation 3(2) of the EIA Regulations 2009.

⁵⁵ AD_077

⁵⁶ AD_20 to AD_23

⁵⁷ Council Directive 85/337/EEC as amended)

⁵⁸ Statutory Instrument 2009 No. 2263

⁵⁹ I am satisfied that this additional environmental information is 'any other information' as defined in the EIA Regulations 2009

National Policy and Legislation

National Policy Statements

- 3.22 The PA2008 imposes an obligation on the SoS to determine the application in accordance with the relevant NPS⁶⁰ except where that would result in any breach of international obligations, duty or law, or where the adverse impacts of the development would outweigh the benefits.

EN-1 - Overarching National Policy Statement for Energy

- 3.23 EN-1 sets out the national need⁶¹ for renewable electricity generating projects such as the CFWF. The United Kingdom (UK) has a commitment to meeting its legally binding target to cut greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels and the government is concerned to ensure that developers deliver the required levels of investment in low carbon generation to decarbonise the way in which energy is produced. Investment in renewable energy would reinforce the UK's security of supply whilst retaining efficiency and competitiveness, and reducing greenhouse gas emissions.
- 3.24 The NPS recognises that in the short to medium term much of the new capacity is likely to come from onshore and offshore wind; and new projects are needed to come forward urgently to meet the Government's target to source 20% of energy from renewable sources by 2020. On shore wind is acknowledged to be the most well established and currently most economically viable source of renewable electricity available for future large scale deployment in the UK. With a generating capacity of between 64 and 96MW the CFWF would clearly make a significant contribution to meeting that need.

EN-3 National Policy Statement for Renewable Energy Infrastructure

- 3.25 Policy specific to Renewable Energy Infrastructure is set out in NPS EN-3. It includes guidance on the assessment requirements for renewable energy infrastructure including onshore wind and a range of technology specific information. Factors which should influence site selection by the applicant are identified⁶², and having regard to the site selection criteria adopted by RWE NRL⁶³ the approach set out in EN-3 has been followed. Technical considerations for the decision maker are identified. These include access tracks, project lifetimes, flexibility in the project details, micro-siting and repowering. All these elements are included within the application project. The impacts which should be addressed in

⁶⁰ EN-1 and EN-3

⁶¹ NPS EN_1 paras 2.2.1; 2.2.15; 3.1.1; 3.1.10; 3.4.1 and 3.4.3

⁶² EN-3 paras 2.7.3 to 2.7.10

⁶³ AD_006

the application and taken into account by the SoS in reaching a decision are set out as follows:⁶⁴

- Biodiversity and geological conservation
- Historic Environment
- Landscape and visual
- Noise and vibration
- Shadow flicker
- Traffic and transport.

These matters are covered in detail within the applicant's ES.

- 3.26 Having regard to the guidance set out in relation to the form and content of NSIP applications, I am satisfied that the applicant has included within the application the technology specific information required for an assessment of adverse impacts to be carried out. Any adverse impacts of the project should be weighed in accordance with the provisions of the PA2008 s104(2)(7).

Conclusion

- 3.27 There is clearly an urgent national need established in national policy as a set out in EN-1 and EN-3 to deliver new renewable energy generation capacity of the sort proposed for Clocaenog Forest. EN-1 goes on to state that if a development is in accordance with the NPS, the decision maker should start with a presumption in favour of that development. I consider the application project against the policies of the NPS in Section 4 of the report.

Energy Policy in Wales

- 3.28 The Wales' Energy Policy Statement (March 2010) aims to have 4.5 KWh/dp installed of onshore wind generation capacity by 2015/2017 (2GW) and 22,500MW of renewables installed capacity by 2025. Of this figure 8,000MW of onshore and offshore wind is expected to be provided by 2015-2017.
- 3.29 NPS EN-3 states that where a proposal is located in Wales, planning policy and advice issued by the WG relevant to renewables, will provide important information to applicants for energy NSIPs.

Planning Policy Wales (PPW)

- 3.30 Planning Policy Wales (PPW) November 2012 sets out the land use planning policies of the WG and promotes the generation of energy from renewable and low carbon energy throughout. In section 1.4, it affirms the important role that the planning system will play in tackling climate change and reducing greenhouse gas emissions,

⁶⁴ EN-3 paras 2.7.30 to 2.7.83

and a series of 19 sustainability objectives are listed in paragraph (para) 4.4.3. These include facilitating development that reduces emissions of greenhouse gases in a sustainable manner and provides for renewable and low carbon energy sources at all scales.

- 3.31 PPW emphasises that strategic wind energy is the source of renewable energy which offers the greatest potential and is the most viable form of renewable energy. PPW confirms the UK target for 15% of total energy to come from renewable sources by 2020, and that the development of wind energy within the SSA identified in TAN 8 2005 would be required to significantly contribute to the WG's aspiration to achieve 2GW in total capacity by 2015/2017.
- 3.32 The objectives of PPW also seek to protect and improve the environment, so as to improve the quality of life and protect local and global ecosystems; conserve and enhance statutorily designated areas of the countryside; conserve biodiversity, habitats and landscapes and conserve the historic environment and cultural heritage.

Technical Advice Note (TAN) 8

- 3.33 TAN 8 provides technical advice to supplement the policy set out in PPW. It confirms at para 1.1 that it is intended to be relevant to the authorisation of electricity generating schemes with a capacity in excess of 50MW under s36 of the Electricity Act 1989. Since schemes of this scale now qualify as NSIPs, they fall to be considered in accordance with the PA2008.
- 3.34 NPS EN-1 states⁶⁵ that account has been taken of the relevant TAN in Wales, which in relation to wind energy is TAN 8. Given the primacy of NPSs in the determination of applications for NSIPs, I consider that where the advice in TAN 8 is consistent with EN-1 and EN-3, it should be given considerable weight.
- 3.35 As I have already identified, the application site falls within the Strategic Search Area SSA(A) Clocaenog Forest which is one of the seven SSAs in TAN 8. In TAN 8 the SSAs are expected to be capable of accommodating up to about 1,120MW of additional capacity, with 140MW in SSA(A). However, in a letter from the Welsh Minister for Environment and Sustainable Government in July 2011 it was confirmed that the figures assessed in a study by Garrad Hassan should apply⁶⁶. A maximum capacity for all seven SSAs of almost 1,700MW was identified. For SSA(A) the identified maximum capacity is 212MW to be provided by onshore wind.

⁶⁵ Para 4.1.5

⁶⁶ WR_036 para 4.41

The National Parks and Access to the Countryside Act 1949

- 3.36 The Act provides the framework for the establishment of National Parks and AONBs. It also establishes powers to declare National Nature Reserves, to notify SSSIs and for local authorities to establish Local Nature Reserves.
- 3.37 National Parks and AONBs are designated for their landscape qualities. The purpose of designating a National Park and AONB is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages. Both a National Park and an AONB has statutory protection in order to conserve and enhance the natural beauty of its landscape.
- 3.38 The application site does not fall within an AONB or National Park. However, it is located between the SNP to the west (about 12km at its closest viewpoint) and the Clwydian Hills and Dee Valley AONB to the east (about 9km at its closest point). The Jubilee Tower on Moel Famau, the highest hill within the Clwydian Range is some 15km to the east. There would be views of the proposed turbines above the tree line of Clocaenog Forest from within both the SNP and the AONB. The significance of the impact of those views on the natural beauty of the landscape and the enjoyment of the qualities within the SNP and the AONB are matters which I consider further in Section 4.

The Wildlife and Countryside Act 1981 (as amended)

- 3.39 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in Wales NRW). The Act also contains measures for the protection and management of SSSIs.
- 3.40 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on Public Rights of Way and Part IV on miscellaneous provisions. There are two nationally designated sites, Mynydd Hiraethog SSSI and Cefn Rofft SSSI, within a 5km radius of the proposed development area. In view of the distance between the application site and the SSSIs there is unlikely to be any physical impact on the designated sites⁶⁷.
- 3.41 If a species protected under Part I is likely to be affected by development, a protected species licence would be required from NRW. There is evidence of the dormouse within the application

⁶⁷ AD_065

site⁶⁸ and an application has been prepared for the relevant licence on which negotiations have been carried out with NRW.

The Countryside and Rights of Way Act 2000

- 3.42 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These include meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.43 This Act is relevant to the examination of any impacts from the proposed development on the Clwydian Hills and Dee Valley AONB. I look in detail at those matters in considering landscape and visual effects in Section 4 of the report.

Local Impact Reports

- 3.44 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 23 September 2013.
- 3.45 A LIR was prepared jointly by DCC and CCBC for submission on 21 October 2013⁶⁹. The principal matters raised in the LIR relate to:-
- Landscape and Visual Impacts
 - Environmental Health Impacts - noise, vibration, air quality, contaminated land
 - Ecology and ornithology impacts
 - Access, traffic, transportation and associated engineering impacts
 - Hydrology and geology impacts
 - Socio-economic impacts
 - Public access and recreation impacts
 - Residential amenity/shadow flicker impacts
 - Cultural heritage
- 3.46 I have paid full regard to the LIR in my examination of the application, including the holding of an issue specific hearing on the environment which included many of the matters dealt with in the LIR. The principal issues raised in the LIR are considered at Section 4 below.

The Development Plan

- 3.47 I consider that the plans and policies that make up the development plans for the local area of the scheme are matters that are important and relevant to the SoS's decision. The

⁶⁸ AD_069

⁶⁹ LIR_001 and LIR_002

planning policy background has been agreed between RWE, DCC and CCBC in the SoCG⁷⁰.

- 3.48 The adopted development plans for the site comprise the Denbighshire Local Development Plan (DLDP)(June 2013), and the Conwy Local Development Plan (CLDP)(October 2013). In the DLDP Objective 11 supports the principle of large wind farm development within identified zones as part of the County's contribution to reducing greenhouse gases. A list of the policies in the DLDP which are relevant to the assessment of the application are set out in the SoCG⁷¹.
- 3.49 The CLDP was adopted after the submission of the SoCG which refers to plans which have now been replaced by the CLDP. However, the SoCG does list the relevant policies of the CLDP which was at the time subject to a binding report from a planning inspector⁷². There has been no change to the policies as listed in the SoCG since the CLDP was adopted.
- 3.50 The policies of both Councils:
- promote renewable energy projects to meet national targets, in line with national guidance where other considerations are acceptable;
 - have identified that in both Council areas the SSA(A) identified in TAN 8 will be the most appropriate location for large scale (over 25MW) wind farm projects.
- 3.51 Whilst the Councils accept that the principle of siting a wind farm development of up to 96MW within SSA(A) is consistent with Welsh national and LDP policy, the specific characteristics of each proposal would need to be assessed and tested against compliance with the other policies of the respective LDPs.

⁷⁰ SoCG_001

⁷¹ SoCG_001 p24 para 6.54

⁷² SoCG_001 p25 para 6.58

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

MAIN ISSUES IN THE EXAMINATION

Preliminary Identification of Principal Issues

- 4.1 In accordance with s88 of the PA2008 I made an initial assessment of principal issues based on the matters raised in the relevant representations and my reading of the application documents. This was sent as an appendix to my Rule 4 and 6 letter⁷³ to all interested parties and was part of the agenda for the Preliminary Meeting (PM) held on 12 September 2013.
- 4.2 The issues which I identified at the outset of the examination were as follows:
- The Development Consent Order
 - Policy Issues
 - The Environment
 - Health and Safety
 - Mitigation and Requirements
- 4.3 Further detail was listed under each of these broad headings in the Rule 4 and 6 letter which was published on 1 August 2013⁷⁴.
- 4.4 Requests were made during the Preliminary Meeting that certain matters should also be considered as principal issues. In particular, concern was expressed that impact on private water supplies should be included. However, the impact on water supply and many of the other matters raised were included under the broad heading of the Environment. In any event all the issues raised were covered either through written submissions or in hearings in the course of the examination.

Issues arising from written submissions

- 4.5 Written submissions raised a number of issues which included:
- landscape and visual impact, including the impact on the SNP and the Clwydian Hills and Dee Valley AONB;
 - construction impacts including traffic, noise and dust
 - impact on residential amenity;
 - the effect of the operation of the wind turbines on the noise environment of the forest and nearby dwellings, including the issues of infrasound and amplitude modulation⁷⁵;
 - impact on the recreational users of the forest and its value as a recreational resource;

⁷³ PD_003

⁷⁴ PD_003

⁷⁵ AD_091 p14

- impact on the approximately 85 dwellings within 2km of the development site which rely on a private water supply largely sourced from within the application site.

4.6 All the matters raised in the written submissions were taken into account in the course of the examination and informed many of my written questions and the matters discussed at the hearings. In the course of the examination the applicant provided responses to matters raised by IPs at each stage of the examination timetable.

Issues arising in Local Impact Reports

4.7 I summarised at para 3.45 the principal matters raised in the LIR. The LIR refers to impacts during the construction phase and when operational. It describes both short term and longer term impacts on the local area in environmental terms by the changes to the character and appearance of the area and the potential to affect ecological interests. The issues raised in the LIR are generally embraced in my preliminary assessment of issues. I deal with the issues raised in the LIR, and in subsequent representations made by DCC and CCBC in my consideration of the key issues below.

The Environmental Statement

4.8 A wide range of issues have been assessed in the ES and many were raised separately by IPs. The ES includes details of measures proposed to mitigate identified harmful impacts and I address these in my assessment below. I am satisfied that the ES together with the additional information submitted by the applicant during the examination was adequate and meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (EIA Regulations 2009)⁷⁶.

Scope of the proposed works

4.9 The proposed authorised project is described in Schedule 1 Parts 1 and 2 of the recommended DCO. In Wales the PA2008 makes limited provision⁷⁷ for consent to be given within a DCO for works which are not ancillary to the project, and which would comprise associated development⁷⁸.

4.10 The applicant deals with the difference between ancillary and associated development in the Explanatory Memorandum⁷⁹, and concludes that no part of the proposal would constitute associated development. No objections were raised by the Councils or any other IP on this matter. The Department for Communities and

⁷⁶ Statutory Instrument 2009 No. 2263

⁷⁷ PA2008 s115(4)

⁷⁸ See DCLG Guidance on associated development applications for major infrastructure projects April 2013

⁷⁹ AD_118 paras 2.11 to 2.25

Local Government (DCLG) advice states that development should not be treated as associated development if it is actually an integral part of the NSIP concerned⁸⁰, and that it is a matter for the SoS to determine on a case by case basis⁸¹.

- 4.11 In this case the authorised project would include shared infrastructure such as access tracks, a sub-station, cable routes and related surface works, two meteorological masts and construction related facilities including four borrow pits. Annexes A and B to the DCLG advice include development such as improvements to vehicular access and sub-stations as an example of associated development. However, the advice also states (para 12) that the development listed in the Annexes should not be treated as associated development as a matter of course.
- 4.12 In this case off-site works outside of the adopted highway would be the subject of separate planning applications⁸². The remaining works items are all located within the application site would be integral to the development. The sub-station would sit within the site boundary, and is required for the production of electricity; the borrow pits are also within the site boundary and have no other function than to provide material for the construction of the CFWF; the access tracks are required to connect the main site to the highway network and provide access for the construction and maintenance to each wind turbine.
- 4.13 I therefore consider that each element of the proposed authorised project would be an integral part of the NSIP, for which detailed proposals are included in the DCO application, and without which the generating station would not be able to be constructed and operated. Therefore I consider that there is no associated development within the meaning of s115(2)(a) of the PA2008 included within the application which would require a separate planning permission.

Key issues for the determination of the application

- 4.14 I deal with the HRA, Compulsory Acquisition and the DCO in later sections of my report. In this section, I deal with the other main issues on which the examination focussed. From the Councils' LIR, submitted written representations, responses to my written questions and evidence given orally at the hearings, I consider that the matters that emerged as key issues in the examination and that are therefore relevant to the SoS's decision are:
- The policy context
 - Landscape and visual impact

⁸⁰ See DCLG Guidance on associated development applications for major infrastructure projects April 2013 para 12 bullet 3

⁸¹ See DCLG Guidance on associated development applications for major infrastructure projects April 2013 para 5

⁸² AD_027 Table 12.1 p2 and para 12.7.4.1

- The impact on ecology, biodiversity, and protected species
- Environmental Health Impacts - noise, vibration, air quality, contaminated land
- Public access and recreation
- Hydrology and geology impacts
- Residential amenity
- Heritage impacts
- Traffic and highway implications
- Socio-economic impacts including health

Policy Context

Conformity with NPSs and other key policy statements

- 4.15 It is clearly established in NPS EN-1 that there is an urgent need for the provision of renewable energy infrastructure. With a generating capacity of between 64 and 96MW the CFWF would make a significant contribution to meeting that need.
- 4.16 It is significant that NPS EN-1 establishes as a starting point a presumption in favour of granting consent to applications for energy NSIPs such as the CFWF, although it is still necessary to take into account environmental, social and economic benefits and adverse impacts at national, regional and local levels. The principles according to which a proposed development should be assessed are set out in Part 4 of EN-1. I deal with the impacts of the project under each relevant issue in this section of the report, and indicate whether or not there is any adverse effect to weigh against the scheme. These impacts include the manner in which the project would combine and interact with the effects of other development, which includes projects for which consent has been sought or granted as well as those already in existence.
- 4.17 Any adverse impacts of the development in terms of long term and cumulative effects fall to be weighed against the potential benefits of the project. However, it would be necessary to identify a significant level of harm to interests of acknowledged importance in order to outweigh the presumption in favour of the provision of renewable energy infrastructure as set out within EN-1.
- 4.18 EN-1 deals with the circumstances in which a new grid connection would be required, but where the grid connection is not included within the application project⁸³. For the CFWF the grid connection would be the responsibility of Scottish Power Energy Networks as the Distribution Network Operator. It is to be dealt with under a separate application to the SoS, which is expected to be submitted in the fourth quarter of 2014.
- 4.19 EN-1 states that in these circumstances the applicant accepts the implicit risks, and must ensure that sufficient information is

⁸³ EN-1 section 4.9

provided to comply with the EIA Directive including indirect, secondary and cumulative effects, which will encompass information on grid connections⁸⁴. The SoS will need to be satisfied that there are no obvious reasons why the grid connection might not be approved. I return to this matter in relation to the Habitats Regulation Assessment which has been undertaken in support of the application.

- 4.20 It is recognised in EN-1 that in taking the decision to bring forward a proposal for infrastructure development the applicant will have made a judgement on the financial and technical viability of the scheme⁸⁵. In this case the applicant RWE NRL is a subsidiary of RWE AG, a major German energy company. The Company owns and operates 24 onshore wind farms in the UK with an installed capacity of 316MW and is currently constructing a further seven onshore wind farm projects in the UK. Having regard to the experience of the Company and the contents of the funding statement which has been submitted in support of the application⁸⁶ I have no reason to consider that either the financial viability or the technical feasibility of the project have not been properly assessed.
- 4.21 EN-1 sets out the considerations to be applied if a s106 agreement is to be taken into account in the determination of a DCO application. A planning agreement under s106 of the TCPA 1990 has been completed between the applicant and the Welsh Ministers, DCC and CCBC⁸⁷. The obligation deals with land outside the boundary of the application site⁸⁸. It ensures that the provisions of the Habitat Management Plan(HMP) and the Access Management Plan (AMP), in so far as they apply to the land identified in the agreement, are implemented. It also makes provision for the protection of television reception during the operational period of the wind farm.
- 4.22 The obligations secured within the s106 Agreement would provide for reasonably and necessary mitigation measures which are directly related to the project and which would not be more appropriately secured by means of requirements. In accordance with EN-1 para 4.1.8, I find that the obligations are matters to be taken into account in the consideration of the DCO.
- 4.23 The selection of the site for the CFWF complies with advice in NPS EN-3, since it would be located in an area identified in TAN 8 as having a suitable wind resource. In terms of the technical considerations to be applied in the assessment of on-shore wind projects, I have indicated in Section 3 that the matters required

⁸⁴ EN-1 4.9.3

⁸⁵ EN-1 4.1.9

⁸⁶ AD_156

⁸⁷ OD_010

⁸⁸ Defined on Plan 2 OD_010

for assessment in the technical guidance set out in EN-3 have been covered in detail within the applicant's ES.

- 4.24 EN-3 accepts that large scale wind farms with a capacity of 50MW or more would be likely to have some visual and/or noise impacts, particularly when sited within a rural area. The CFWF would be in an area which has a remote and rural character and as a result there would be significant landscape and visual impacts together with changes to the noise environment which I consider later in this section of the report. In terms of separation distances from dwellings, EN-3 advises that the appropriate distance from sensitive receptors should be determined in terms of the impact on visual amenity and noise. I consider the impact on residential amenity later in this section of the report.
- 4.25 Having regard to the important contribution that the CFWF would make to the urgent need for renewable energy generation, I find that the application project is in general conformity with national policy as set out in EN-1 and EN-3.

Planning Policy Wales (PPW) and Technical Advice Note (TAN) 8

- 4.26 As a proposal that would deliver up to 96MW of renewable energy the CFWF would be consistent with the sustainability objectives of PPW. The site is not within a protected landscape area, although the new turbines would be visible in views from protected landscapes. I consider the significance of any effects on those landscapes in my assessment of landscape and visual impact. A number of measures are proposed to protect and enhance ecosystems and avoid irreversible harmful effects on the natural environment, and the applicant's assessment of impact on the historic environment and cultural heritage indicate that these would not be compromised. I set out my assessment of these matters under those headings later in this section of the report.
- 4.27 The importance of the SSAs, as identified in TAN 8 is reaffirmed in PPW. Development in these areas is key to the fulfilment of the WG's climate change and renewable energy aspirations⁸⁹. The SSAs are considered to be the areas in Wales which, on the basis of empirical research, are the most appropriate locations for large scale wind farm development⁹⁰. Local Planning Authorities with SSAs in their areas are required to take the WG's imperative for renewable energy into account when they are consulted on applications for large scale onshore wind farm projects.
- 4.28 Throughout the examination doubts were raised by objectors⁹¹ to the project concerning the status of TAN 8. There was concern

⁸⁹ PPW para 12.8

⁹⁰ PPW para 12.8.13

⁹¹ For example: WR_016; WSC_003; WSC_005; WSC_008; WSC_007; WR_57 and by Mr Gardner orally at the Policy Hearing (HRG_008)

that there had been a lack of meaningful public consultation such that the SSAs had been imposed on local communities without proper consideration of the views of local people and the impacts that the development of the SSAs would have on local residents. Furthermore, TAN 8 was published in 2005 and had not been the subject of a Strategic Environmental Assessment (SEA)⁹². The overall capacity figures for the SSAs within TAN 8 were subsequently increased by Ministerial letter in July 2011⁹³ and objectors argued that this should have been the subject of SEA.

- 4.29 NPS EN-1 states that the energy NPSs have taken account of the Technical Advice Notes in Wales where they are applicable, and NPS EN-3 expects applicants to take into account the planning policy and advice issued by the WG in working up their proposals. EN-3 also states that whether an application conforms to the guidance or targets will not in itself be a reason for approving or rejecting an application.
- 4.30 A considerable level of technical analysis was undertaken on behalf of the WG in the preparation of TAN 8 in order to identify the areas in Wales most likely to be able to accommodate large scale wind farm development⁹⁴. The technical work accords with the approach required in NPS EN-1 and EN 2.
- 4.31 Whether or not those communities located near to the SSAs participated fully in the production of TAN 8, there is evidence that public consultation was carried out and local communities were kept informed of the process and of the decisions which were being taken for future provision of large scale wind farms⁹⁵.
- 4.32 TAN 8 was published in its final form in July 2005. It makes clear that the advice note "addresses the issue of location of onshore wind facilities at a strategic all-Wales level" and that "Local Planning Authorities are best placed to assess detailed locational requirements within and outside SSAs in the light of local circumstances". Although DCC and CCBC have not produced a detailed assessment of SSA(A), relevant policy guidance is set out in the adopted local development plans for both Councils.
- 4.33 All the matters listed in Appendix D to TAN 8 have been covered in the applicant's submission, and are the subject of Environmental Impact Assessment. Thus although there has not been an interim stage of assessment carried out by the Local Planning Authority, there has been no lack of detailed appraisal which has now been the subject of public scrutiny through the six months of examination of the DCO application.

⁹² No SEA was required at that time for a plan or programme for which the first preparatory act began before July 2004

⁹³ AD_009 para 4.6.4.2

⁹⁴ The first study was carried out in 2002 led by environmental consultants Arup, followed by a feasibility study of the seven proposed SSAs by Garrad Hassan and Partners in 2005.

⁹⁵ WSC_006

- 4.34 Furthermore, whether or not the local communities were fully engaged in the public consultation on TAN 8, the application falls to be considered against NPS EN-1 and NPS EN-3 in the first instance. TAN 8 provides a relevant evidence based guide to the choice of locations for a large scale wind farm, and the application site falls within one such location. Whilst neither TAN 8 nor the Ministerial letter of July 2011 have been the subject of SEA, the application is supported by EIA in the form of an ES which covers all the matters identified as relevant in EN-1 and EN-3, and in Annex D to TAN 8. In all these circumstances I consider that TAN 8 is important and relevant for the decision maker in this case, and contrary to suggestions made by objectors, it should not be discounted.
- 4.35 In terms of the capacity of SSA(A), the Ministerial letter of July 2011⁹⁶ restates the maximum capacities assessed by consultants Garrad Hassan with SSA(A) allocated a capacity of 212MW. In SSA(A), the operational TMFG wind farm was granted permission before the issue of TAN 8. TAN 8 refers in para 1.4 to a requirement for "additional" installed capacity, and in view of this wording, I accept that TAN 8 was intended to make policy provision for renewable energy generation in addition to that already built or granted consent before its publication⁹⁷.
- 4.36 The combination of CFWF together with those wind farms which have received consent since the issue of TAN 8, SSA(A) would provide between 166.2MW and 198.2MW of renewable energy generation. Since this falls within the overall target capacity for SSA(A), and the site lies within the boundary of the SSA, I consider that the application is compliant with the strategic policies of the WG. It would clearly make an important contribution to the wider WG target for the provision of renewable energy.

Conformity with local plan policies

- 4.37 NPS EN-1 and EN-3 are the key policy documents against which the CFWF application falls to be assessed. However, the Local Development Plans remain an important material consideration. Both Councils have recently adopted LDPs which reflect up to date UK and WG policies.
- 4.38 In the DLDP, there are a number of policies which relate to development in the rural areas, but in particular Policy VOE 9 deals with on-shore wind energy development. It supports strategic or large scale development in excess of 25MW generating capacity in the Clocaenog SSA (SSA-A), and sets out the environmental impact tests to which any applications will be subject.

⁹⁶ AD_009 para 4.6.4.2

⁹⁷ LIR_001 para 15.1.6

- 4.39 The CLDP includes policies to protect the environment and promote sustainable development which are relevant to the CFWF application. In particular Policy NTE/7 states that very large scale (over 25MW) wind farms will be concentrated within the Clocaenog SSA, subject to a satisfactory EIA, and the application of criteria concerned with ecology; cumulative impacts on nearby communities, the landscape and the environment; and impacts on residential amenity in terms of noise and shadow flicker.
- 4.40 Having regard to the provisions of Policies VOE 9 and NTE/7, it is clear that in principle, the proposed CFWF would be acceptable, subject to compliance with the detailed criteria set out in the policies. The Councils do identify issues in their Local Impact Report⁹⁸ in relation to landscape and visual impact, and residential amenity, which would potentially bring the proposal into conflict with the policies of the LDPs. I consider these matters later in this section of my report.

Landscape and visual amenity

- 4.41 The assessment of the landscape and visual effects of energy projects is a requirement of EN-1 (section 5.9), and the applicant has submitted an assessment of potential landscape and visual impacts during construction, operation and decommissioning of the project in accordance with EN-1. Existing and consented wind farm development has been included to provide a cumulative impact assessment. Landscape effects are the change in character due to loss of a landscape's key features. They are considered separately to visual effects, which are the visual changes experienced by people who may be accessing the countryside for enjoyment, travelling through the area or have a view which contributes to residential amenity.
- 4.42 The methodology used by the applicant for the Landscape and Visual Impact Assessment (LVIA) is based on Guidelines for LVIA, Second Edition⁹⁹. The study area for the assessment was agreed with DCC and CCBC and other consultees, and followed recommended good practice¹⁰⁰. For the LVIA a radius of 35km was adopted, and for the cumulative assessment a radius of 60km was adopted.
- 4.43 In EN-3 (para 2.7.48) it is accepted that modern onshore wind turbines are large structures and that there will always be significant landscape and visual effects from their construction and operation from a number of kilometres around the site. The factors to be considered in judging the impact of a project on the landscape include the existing character of the local landscape, its current quality, how highly it is valued and its capacity to

⁹⁸ LIR_001 and LIR_002

⁹⁹ AD_044

¹⁰⁰ AD_013 section 5.1.4

accommodate change. The arrangement of the wind turbines would also need to be carefully designed within the site to minimise effects on landscape and visual amenity.

- 4.44 Subject to certain reservations by the DCC and CCBC set out in the LIR¹⁰¹ and SoCG¹⁰², NRW and the Councils agree that moderate landscape and visual effects would be largely contained within just over 15km and major significant effects within about 5km from the nearest CFWF wind turbine.
- 4.45 The Councils raise concerns¹⁰³ with regard to the extent and scale of the CFWF which would introduce significant landscape and visual impacts to areas not currently affected by wind farm development and to areas where wind farm development is present but has less presence and impact. Furthermore, the Councils; the Clwydian Range and Dee Valley AONB Joint Advisory Committee¹⁰⁴; Council for the Protection of Rural Wales (CPRW) Conwy Branch¹⁰⁵; Clocaenog Community Council¹⁰⁶; and a number of local residents¹⁰⁷ consider that effects would extend beyond the immediate 5km radius of the site, and impact on views from the protected landscapes of the Clwydian Range and Dee Valley AONB.
- 4.46 The Snowdonia National Park Authority¹⁰⁸ (SNPA) and the Snowdonia Society¹⁰⁹ as well as a number of local residents object to the potential impact on the SNP.
- 4.47 Within the 5km radius of the site, there are some 56 properties/property groups. Local residents raise issues¹¹⁰ as to the impact of the CFWF on the landscape and visual amenity of the area in which they live, in particular having regard to the height of the turbines which would be significantly greater than that of any turbines either existing or with consent in the locality.

Landscape Impact within 5km

- 4.48 Clocaenog Forest is classified by LANDMAP¹¹¹ as Wooded Upland and Plateau, and Wooded Hillside and Scarp Slopes, part of the wider national scale Denbigh Moors Landscape Character Area. PPW endorses the LANDMAP information system as an important resource to use for landscape assessment.

¹⁰¹ LIR_001 paras 6.2.2 to 6.5.1

¹⁰² SoCG_002

¹⁰³ LIR_001 paras 6.2.4 and 6.5.1

¹⁰⁴ WR_007

¹⁰⁵ WR_005

¹⁰⁶ WR_018

¹⁰⁷ For example RQ_1_002; WSC_030; RR_016 and WR_007

¹⁰⁸ RR_035 and WR_035

¹⁰⁹ AS_013

¹¹⁰ For example WR_002; WR_003; WR_004; WR_008; WR_009; WR_010 and WR_013

¹¹¹ A GIS based landscape resource maintained by NRW

- 4.49 As the site lies within SSA(A), the guidance in TAN 8 is relevant. That states that within and immediately adjacent to the SSAs, the implicit objective is to accept landscape change with a significant change in landscape character as a result of wind farm development. In the TAN 8 Annex D Study of SSA(A) zones are identified which would be more suited to wind farm development. The application site falls within Zone 1 which is ranked as of medium to low sensitivity in terms of landscape character. Annex D also notes that careful consideration would need to be given to the impact of development on the Clwydian Hills AONB and the Offa's Dyke National Trail.
- 4.50 The sites of the existing and permitted wind farms within SSA(A) are located to the north and south of the application site. With the CFWF, these would be linked together to form what the Councils describe as a "spine of turbines extending a little under 8km along a north south axis across the CF plateau"¹¹². Such an extensive area of wind turbines spread through Clocaenog Forest, would be a significant change in its landscape character, to which many who live near to the forest or who enjoy it for recreational purposes, object. The forest is valued by these objectors¹¹³ as a place with mainly natural features and activities free of disturbance from urban influences, with a high level of tranquillity.
- 4.51 However, Clocaenog Forest is primarily a coniferous forest planted for commercial reasons. As such its character is largely man made, and is heavily influenced by the forestry operations undertaken by NRW. The historic and natural landscape features of the application site and the wider area of the forest have largely been lost due to the plantation of the forest trees. The introduction of man made wind turbines into the forest would not be entirely out of keeping with its existing physical characteristics. Therefore, whilst the change to the physical character of the forest would be significant, it would not be seriously adverse.
- 4.52 It is on the remote and tranquil quality of the forest that the CFWF would have an adverse impact. In the 2009 "Wales Tranquil Areas Map" much of the forest is classified as "undisturbed"¹¹⁴. This is countryside usually free of any substantial disturbance in day time. With the addition of the CFWF those parts of the site within 0.5km radius of each of the 32 wind turbines would become classified as Zone B¹¹⁵, whilst the areas within an additional 0.5km radius would become Zone C¹¹⁶. As a result the majority of the central core of the forest would lose its current high level of tranquillity.

¹¹² LIR_001 para 6.1.8

¹¹³ For example WR_010; WR_011; WR_015 and see oral summaries from open floor hearings

¹¹⁴ OD_007

¹¹⁵ Areas subject to significant traffic intrusion and other equivalent disturbance

¹¹⁶ Areas somewhat disturbed by light traffic noise, small settlements etc

- 4.53 Clocaenog Forest is located within the larger Denbigh Moors National Landscape Character Area. The applicant's LVIA identifies a significant effect on the character of an area of up to 5km from the development, due to the introduction of the wind turbines. The presence of a significant swathe of large mechanical structures towering above the forest trees and with moving blades would inevitably undermine the tranquil, natural environment of this wider landscape area and have a significant adverse impact on landscape character, as identified by the Councils in their LIR¹¹⁷.
- 4.54 Thus although I find that the forest itself could accommodate the wind farm without serious harm to its physical characteristics, there would be a loss of the quality of tranquillity within the forest, and the character of the landscape within 5km of the site would be significantly affected. However, the concentration of very large scale wind farms in the Clocaenog SSA is supported in the policies of the DLDP and the CLDP. The change to landscape character within and adjacent to the SSA is a consequence anticipated in EN-3 and accepted in TAN 8.
- 4.55 I understand the reasons why the likely impacts of the project are not welcomed by local residents and users of the forest, but such changes are not unreasonable in the context of the national need for wind farm development of the scale proposed. I therefore conclude that the impact on the landscape of the forest and the surrounding area would not be so harmful as to justify the withholding of consent for the application.

Effects on landscape character beyond 5km

- 4.56 As the distance from the site increases, the physical impact of the project on landscape character would decline. Significant adverse impacts would be concentrated within the landscapes surrounding the application site which are of county value¹¹⁸. Beyond these areas, the Clwydian Range and Dee Valley AONB lies to the east, and the SNP lies to the west of the application site.
- 4.57 AONBs and SNP enjoy statutory protection by reason of the National Parks and Access to the Countryside Act 1949. EN-1 refers to the duty to have regard to potential impacts on the purposes of nationally designated areas when considering applications for projects outside the boundaries of these areas¹¹⁹. The NPS refers to the need for protection from harmful development outside their boundaries which might adversely impact on the panoramic views gained from within the designated

¹¹⁷ LIR_001 para 6.2.3

¹¹⁸ LIR_001 para 6.2.3

¹¹⁹ EN-1 para 5.9.9

area, or impinge on views into the areas¹²⁰. I deal with the impact on panoramic views under "Visual Amenity" below.

- 4.58 In terms of physical impact on the landscape character of the AONB, the natural landscape is made up by limestone pavements, heather moorland, hanging valleys, wetlands and broad-leaved woodland. It is viewed as the historic gateway to Wales, and has an important function for access and recreation, being crossed by the Offa's Dyke National Trail. The AONB is 9km from the application site at its closest, and having regard to this distance, I find that there would be no physical change to the intrinsic landscape character of the AONB.
- 4.59 Because of the distance of the SNP from the application site, at about 12km from the closest wind turbine, the presence of the wind farms in SSA(A) would not be likely to harm the physical character of the park with its mountains, lakes, woodlands and valleys; the historical value of its Stone Age burial chambers, Roman forts, castles or slate quarries; or its geology which is of international interest.
- 4.60 I agree with the landscape impact assessment undertaken on behalf of the applicant. As the distance from the application site increases, the impact of the wind farm on the physical character of the landscape beyond 5km would progress from moderate to minor. There would be no significant impact on the landscape character of the Clwydian Range and Dee Valley AONB or the SNP.

Visual amenity

- 4.61 The applicant's assessment of visual impact includes a set of landscape and visual graphics¹²¹. A number of objectors¹²² consider that the visual impact of the turbines has been understated by the applicant as a result of the methodology adopted and the quality of the visual graphics. The applicant's methodology does accord with good practice. However, during clear weather conditions on my accompanied and unaccompanied inspections of the site and surrounding areas, I saw the site from a number of the applicant's viewpoints. Where the TMFG turbines were in the view, I was able to compare the visibility of those turbines with the representation in the applicant's viewpoints. I found that the TMFG turbines were generally more sharply outlined and prominent in the real life view than they appeared in the photographs and photomontages.
- 4.62 On the basis of this experience, I consider that the applicant's visual graphics provide a useful reference in terms of the number and the position of turbines which would potentially be seen in a

¹²⁰ EN-1 para 5.9.12 to 5.9.13

¹²¹ AD_010 Figure 5.3 and AD_011 Viewpoints

¹²² For example WR_10; 20; WR_ 21; WSC_008 and WSC_027

view. However, the degree of clarity in the definition of the turbines in the photographs and consequently in the photomontages does risk understating the visual impact of the turbines. Although the level of impact would depend upon weather conditions, visual graphics do not necessarily provide an accurate representation of the level of visibility and hence impact that the turbines would have within each view.

- 4.63 The applicant's Zone of Theoretical Visibility (ZTV) identifies those areas within a radius of 35km around the application site from which turbines would be visible in a "bare earth" scenario with no vegetation or buildings¹²³. The majority of significant visual impacts would affect those locations closer to the application site. For people travelling through or visiting the area, views of the wind turbines would be intermittent, and the undulations in the topography and the presence of trees and other vegetation would provide screening. Nevertheless, because of the size and number of wind turbines, there would be many locations within the 5km radius where the visibility of the turbines would make a significant change to the view.
- 4.64 Viewpoints 1 to 7 and 26¹²⁴ provide an indication of the level of change in the views from locations within 5km. The Council's LIR¹²⁵ summarises the key impacts found in the applicant's assessment. In particular, the Councils estimate that there are about 56 properties or property groups in this radius. These include the areas surrounding the villages of Cyffylliog, Llanfihangel, Glyn Myfyr, Pentre-IlynCymmer and scattered properties in the Nant Ladur valley.
- 4.65 Not all the residents of these properties would have views from within their dwellings, but they would experience views as they move through the area and some would experience views from within the grounds of their properties. Whilst other wind turbines may already be a feature within the views, the addition of the application project would increase significantly the impact of wind farms upon the visual amenity of residents and visitors to the area.
- 4.66 I deal with the impact on residential amenity later in this section of the report, but find that the visual impact of the project within a radius of 5km, on its own and together with other operational and permitted wind farms, would be significant. This level of impact is accepted as a consequence of large scale onshore wind farm development in EN-3 (para 2.7.48). Furthermore, in the identification of the forest as a site suitable for large scale wind farm development in TAN 8 and in the LDPs, the quality of the landscape was taken into account, together with its capacity to

¹²³ AD_010 Figure 5.25

¹²⁴ AD_010

¹²⁵ LIR_001 Table 1 p22

accommodate change. As a result I consider that this level of impact is not in itself a reason to withhold consent for the CFWF.

- 4.67 From between 5km and 10km from the site, visibility would be more limited. The location of the site upon a convex edged forested upland plateau would provide a degree of visual screening, and restrict lines of sight as for example from the western part of the Vale of Clwyd. There would be localised views, and Viewpoint 8¹²⁶ at Ty'n-y-celyn provides an indication of the extent to which wind turbines would intrude into views. The presence of a large area of wind farm development would be experienced for people travelling throughout the area which lies between 5km and 10km from the site. However, this level of visibility and impact is an inevitable consequence of the scale of development required to meet the targets adopted by WG in TAN 8, and is acceptable in the context of this application.
- 4.68 Whilst the visibility and consequent impact of the development would recede with distance from the site, there would be some localised areas of significant negative impacts on views up to some 15km from the development area. These include locations within the Clwydian Range and Dee Valley AONB¹²⁷ and the SNP¹²⁸ from which I consider negative impacts would be experienced.
- 4.69 From within the AONB, there are existing views of TMFG wind farm, and other permitted wind farms would also be seen when built. The CFWF would add to the presence and impact of wind farm development in those views, particularly since it would be taller than any consented development and would join together the sites to the north and south of the forest.
- 4.70 An example of the impact is illustrated in Viewpoint 15d¹²⁹ from Clwyd Gate. In this photomontage the turbines are shadowy figures on the skyline seen over a distance in excess of 14km. However, the turbines are likely to be more conspicuous in clear weather than indicated in the applicant's landscape and visual graphics. Having regard to the scale of the spread of large wind turbines which would be arranged across a significant part of the view, I consider that there would be a considerable negative change in the view as the presence of wind farm development would become so much more dominant.
- 4.71 A similar impact would be experienced at Moel Famau, the highest peak in the chain of hills which make up the Clwydian Range¹³⁰ at over 15km distance from the application site. Objectors¹³¹ to the

¹²⁶ AD_011

¹²⁷ WR_007 from the Joint Advisory Committee for the Clwydian Range and Dee Valley AONB and WR_019 from the CPRW Clwyd Branch

¹²⁸ See WR_035 from the Snowdonia National Park Authority

¹²⁹ AD_011

¹³⁰ AD_011 Viewpoint 16

¹³¹ WR_031 includes a list of objectors names

project made extensive submissions as to the historical significance of Moel Famau and its Jubilee Tower¹³² for the people of Merseyside as well as residents and other visitors from many miles around. On a clear day in views to the west from Moel Famau, the operational and permitted wind farms in and around SSA(A) would comprise separate pockets of wind turbine development. The CFWF would join these together to form a significant line of wind turbines along the upland plateau running north south, positioned about halfway between SNP and the AONB¹³³.

- 4.72 Unlike the appeal proposal at Gorsedd Bran¹³⁴, the turbines would not interrupt the view from Moel Famau to Mount Snowdon, which would lie to the north west of CFWF, but they would become a distinct landmark in the panorama. The remoteness and wildness of the landscape across which views are gained from the AONB to the SNP would be undermined as a result of this joining up of the wind farm sites to form what would appear at this distance to be one very large wind farm.
- 4.73 The applicant points out¹³⁵ that the offshore wind farms to the north of the Clwydian Range are also visible from Moel Famau, and to the north east activities in the port of Liverpool disturb the view. These views do not harm the peace and tranquillity experienced at Moel Famau and other parts of the AONB itself, and I accept that the increased presence of wind turbines in the views to the west would be unlikely to do such harm. Nevertheless, the increased presence of wind turbines in SSA(A) would change the current experience of looking to the west from key parts of the AONB.
- 4.74 As EN-1 states, the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent. However, the change to visual amenity which would result from the development of an extensive line of turbines within a panorama which at present retains a natural, undeveloped quality would in my view cause some harm in terms of the enjoyment by visitors of the views from the AONB.
- 4.75 The applicant argues¹³⁶ that in identifying SSA(A), the impact on the AONB must have been taken into account. However, the work carried out in the development of TAN 8 did not undertake any detailed study of landscape impacts, so I am doubtful if the impact on visual amenity was considered. In my view the harmful change in the views westward from the AONB is a matter which weighs against the project.

¹³² Constructed in 1810 to commemorate the Golden Jubilee of King George III

¹³³ AD_011 Photomontage 16b and 16f

¹³⁴ LIR_001 App 6

¹³⁵ CLIR_002 paras 5.5 to 5.6

¹³⁶ CLIR_002 para 5.5

- 4.76 The ZVA indicates that whilst there are significant areas of the Clwydian Range and Dee Valley AONB from which the CFWF turbines would theoretically be visible, views from the SNP would be more limited. Viewpoint 13 is from the footpath above Cadair Benllyn on the edge of the SNP and lies some 11.5km from the nearest proposed CFWF wind turbine.
- 4.77 The photomontage at 13d gives an impression of the extent to which the turbines would be visible¹³⁷. They would be densely clustered in part of the view, then spaced out across the skyline, often appearing in pairs. Without the CFWF the view from the footpath and edge of the SNP would be of a rural, largely natural landscape free of man made influences apart from small groups of wind turbines. With the CFWF, those small groups of wind turbines would be joined up, and wind turbines would extend across a significant part of the view.
- 4.78 Because of the extensive length of the area from north to south which would be developed with turbines, I consider that they would become a dominant feature on the skyline east of the SNP. Where closer views do occur, as at the footpath above Cadair Benllyn, I consider that the extensive line of turbines would undermine the natural, undeveloped quality of visual amenity to the east from parts of the SNP. However, when seen in more distant views within the SNP, such as from Foel Gopyn at about 17.5km, the overall numbers seen would be reduced, and the scale on the skyline would be less significant. In these more distant views the impact on visual amenity would not be so marked.
- 4.79 In summary, I conclude that there would be a harmful change in the views westward from the AONB, and there would be some negative impact on visual amenity as users of the SNP look out towards the east, from a limited number of locations closer to the edge of the park. These are matters to be weighed in the planning balance in the context of s104(7) of the PA2008.

Mitigation and design

- 4.80 Within Clocaenog Forest, the forest trees would provide valuable screening of the wind turbines from many locations within the forest itself. However, mature forest trees are about 20ms in height, whereas the turbines would be some 145 metres to blade tip. As a result, the wind turbines would rise above the trees when viewed from many locations within and around the site and within the wider landscape. Mitigation in the form of screening of the turbines in these views would not be feasible. The Council for the Protection of Rural Wales (CPRW) Conwy Branch¹³⁸ considers that a reduction in the height of the turbines to 100-120m would

¹³⁷ A note is added to 13d to indicate that turbine visibility has been enhanced (AD_011)

¹³⁸ WR_005

reduce the impact of the project, in particular in middle distance views.

- 4.81 Reducing the scale would be a way of reducing landscape and visual impact. However, EN-3 recognises that it is unlikely that either the scale or number of wind turbines within a project could be changed without significantly affecting the electricity generating output of the wind farm. The CFWF would fall within, and make a significant contribution to, the target capacity of SSA(A). Mitigation in the form of reduction in scale would significantly reduce the contribution of this project and undermine the purpose for which it is proposed. I do not therefore consider this to be a potential form of mitigation in this case.
- 4.82 The primary means for minimising the landscape and visual impact of a major wind farm development as proposed therefore remains through the siting of the turbines and the design of the layout. As stated in EN-3, mitigation should be inherent in good design. However, there are constraints on the options available for the siting of turbines within the forest, having regard to the need to avoid interference in the wind flow between turbines, and the need to avoid physical constraints.
- 4.83 EN-1 para 4.5.4 requires that an applicant should be able to demonstrate how the design process was conducted and how the proposed design evolved. This is provided in the Design and Access Statement¹³⁹, and in the ES¹⁴⁰. A height of 145m to blade tip was chosen for the turbines in order to minimise any turbulence effects within the surrounding forest¹⁴¹. If a turbine of less height was chosen, to generate a similar level of output, more turbines would be required and this would result in an undesirable loss of productive forest.
- 4.84 In addition, the location of each turbine within the site has been influenced by the need for an optimum distance between turbines to improve technical performance; the need to minimise visual impact; take account of the location of watercourses and waterbodies; avoid key habitats of nature conservation importance and impacts on protected species; avoid areas of archaeological interest; and avoid close proximity to housing.
- 4.85 In terms of the outcome of the design strategy, there would be variation within the heights of the wind turbines in the forest. Existing and permitted wind turbines are all under 100m in height to blade tip apart from Derwydd Bach, which would be 120.5m. The TMFG site has 25 turbines, at 75m to blade tip. It abuts the boundary of the CFWF site to the north west, and the permitted

¹³⁹ AD_171

¹⁴⁰ AD_006 paras 2.4.1 to 2.4.4 and AD_005 Figures 2.2 to 2.4

¹⁴¹ AD_006 para 2.4.2.8

Brenig wind farm would be located between the two parts of that development with 16 turbines at 100m to blade tip.

- 4.86 Differences in the ground level AOD of the turbines in the wind farms which are existing, permitted and proposed may to some extent mask the variation in their height. However, this would not conceal any differences in the diameter of the blades or the breadth of the towers. The CFWF wind turbines would be noticeably different in scale from those at TMFG for example, and such differences would add to the clutter of turbines and blades in many of the views towards the site.
- 4.87 About 13 of the proposed CFWF turbines would be sited immediately to the east of the TMFG and Brenig wind farms. In this area the siting of CFWF wind turbines would result in a dense cluster of wind turbines in the north of the forest as illustrated in a number of the visualisations submitted by the applicant¹⁴².
- 4.88 Looking north from Craig Bron-banog¹⁴³, the southern wind turbines of CFWF would be seen spaced out across the foreground, with a cluster of turbines in the background. The new CFWF turbines would be seen together with TMFG and Brenig wind farms and it would be difficult to differentiate between each wind farm. A similar impression would be given in views from the south west, and the B4501¹⁴⁴. There would be a massing of the turbines across the northern part of the forest, and as the CFWF extends south through the forest, the turbines would appear to be randomly spaced sometimes at wide intervals. Viewpoint 4b shows the turbines more spaced out and appearing in parts as a series of individual turbines, in the southern part of the forest.
- 4.89 Having regard to the examples provided by the visualisations, I find the Councils criticisms of the design of the project¹⁴⁵ to carry some weight. The aims of the applicant's design strategy¹⁴⁶ are not met in a number of instances. The layout of the northern part of the site is such that multiple turbines would be seen behind one another in "tangles" because of the proximity of TMFG and the site of the permitted Brenig scheme to the proposed new turbines. Further south in the site, individual turbines do appear in some views as separate from the rest of the group¹⁴⁷. Although the layout on the application plans does present a balanced and organised spread of turbines, the spacing between the turbines appears irregular in many views¹⁴⁸. As a result the turbines would not appear as a coherent group which would make up a recognisable and discreet CFWF.

¹⁴² AD_011

¹⁴³ AD_011 Viewpoint 1d

¹⁴⁴ AD_011 represented by Viewpoints 2b and 3b

¹⁴⁵ RQ_1_007

¹⁴⁶ AD_171 para 1.5.3

¹⁴⁷ AD_011 For example, turbine 27 in Viewpoint 1e

¹⁴⁸ AD_011 See Viewpoints 2e and 8d for examples of this

- 4.90 There are benefits in the approach which has been adopted, in particular the lower number of turbines needed to produce the electricity generated, and smaller area of tree clearance required to avoid turbulence. In addition, the project is concentrated in a part of the SSA, leaving a substantial proportion of the forest free of wind turbines. Furthermore, having regard to the nature of the landscape in which the project would be located, I consider the aim to favour random clusters of turbines and to avoid regimented lines to be appropriate.
- 4.91 Nevertheless the lack of separation between the project and TMFG and the permitted Brenig wind farm within the north of the forest results in a tangled mix of turbines which would do little to mitigate the landscape or visual impacts of the scheme. The spacing of the turbines as the project extends south through the forest is appropriate to the landscape context of the site, but when seen together with the northern cluster of turbines there is little coherence to the design, having the appearance of a series of stragglers lying between the dense group of turbines to the north and the separate wind farms which have been permitted to the south. Having regard to the character and constraints of the application the design chosen for the layout might be the best that the applicant could achieve, but I conclude that it provides little mitigation for the proposal as sought in EN-3, in terms of landscape and visual impact.

The Grid Connection

- 4.92 NRA raises concerns about the lack of any cumulative LVIA of the future grid connection together with CFWF and all operational and permitted wind farms for SSA(A). However, the grid connection is not the responsibility of the CFWF applicant, and at the close of the examination, no application had been submitted. Whilst the northern route to the St Asaph substation is the route for which consultation and pre-application discussions have taken place, there was insufficient detail available for the applicant to undertake a fully detailed cumulative LVIA to include the grid connection. I return to the implications of this position later in my report.

The impact on ecology, biodiversity and protected species

- 4.93 The applicant has separated non-avian ecology and avian ecology for the purposes of the ES¹⁴⁹. The ecological impact work was carried out in accordance with the Institute of Ecology and Environmental Management (IEEM) Guidelines for Ecological Impact Assessment in the UK (2006). Ecological surveys which have been carried out are set out in the ES¹⁵⁰. The adequacy of survey work was questioned by the North Wales Wildlife Trust

¹⁴⁹ AD_21 Chapter 9 and AD_23 Chapter 10

¹⁵⁰ AD_065 to AD_076: Annexes 9.2 to 9.13 and AD-079 to 090: Annexes 10.1 to 10.11

(NWWT)¹⁵¹, but the Councils accept the data presented as a result of the surveys as being a true representation of the ecological resource of the application site. I agree with the Councils that the survey work is adequate.

- 4.94 Most of the application site is characterised by coniferous plantation of relatively low ecological value. However, there are areas of more important acid heath and blanket bog habitats, and the site supports a number of protected and notable species. Non avian species include the small pearl bordered fritillary butterfly, common lizard, red squirrel, dormouse, otter, water vole, badger and four bat species. The distribution of these species is generally restricted to relatively small areas of suitable habitat within the wider site.
- 4.95 Bird survey work identified one hundred species of birds within the application site and a 2 meter buffer zone which included 60 species of conservation concern. The species included Red Kite, Goshawk, Hen Harrier, Merlin, Peregrine, Black Grouse, Short-Eared Owl, Long-Eared Owl, Barn Owl, and Nightjar in addition to various species of wildfowl and waders, and woodland passerines. Not all these were identified as breeding within the site.
- 4.96 The presence of rare and protected species and their habitats has informed the design of the layout of the turbines, as well as the proposed future management of the wind farm site. In particular design mitigation for birds relates to the avoidance of sites used by Lekking Black Grouse. There is in addition embedded mitigation and enhancement of habitat which is principally targeted at black grouse, but which would benefit other bird species such as nightjar as well as non-avian species¹⁵².
- 4.97 The assessment of potential impacts on both avian and non-avian species is carried out in the ES Chapters 9 and 10¹⁵³, taking into account mitigation which is embedded within the project. The methodology and conclusions of both the avian and non-avian ecology assessments in the ES are generally agreed by NRW¹⁵⁴, subject to some detailed points on which further discussion took place during the examination.
- 4.98 The Councils also agreed the methodology and conclusions of both the avian and non-avian ecology assessments in the ES, subject to the following points. There are concerns about the level of significance accorded the habitats of marshy grassland and ponds. However, since water courses are proposed to be buffered¹⁵⁵, such habitats are unlikely to be significantly affected by the

¹⁵¹ WR_37

¹⁵² AD_23 section 10.8

¹⁵³ AD_021 and AD_023

¹⁵⁴ SoCG_001 section 7 and 8

¹⁵⁵ Requirement 7 to the recommended DCO sets out the width of the buffers to be maintained (Appendix E)

development. The other receptor assigned a level of significance lower than expected by the Councils are the Common Lizard (*Lacerta Vivipara*) and Adder (*Vipera Berus*). Nevertheless these species are subject to legal protection and as such would be subject to detailed consideration if there were any potential for impacts during either the construction or operation of the project. Therefore the Councils are satisfied that this is not a significant issue.

4.99 Detailed mitigation and monitoring to address the potential construction phase impacts identified in respect of both non-avian and avian ecology are to be set out in the Construction Method Statement (CMS)¹⁵⁶ which would require submission and approval by the Councils as Local Planning Authorities (LPAs) before any work on the project commenced, in accordance with requirement (R)9 of the draft DCO. Much of this work would cover concerns raised by the NWWT¹⁵⁷. The list of plans to be finalised post consent but before development commences comprises:

- Construction Environment Management Plan (CEMP)¹⁵⁸
- Waste Management Plan (WMP)¹⁵⁹
- Emergency Response Plan (ERP)¹⁶⁰
- Surface Water Management Plan (SWMP)¹⁶¹
- Soil and Peat Management Plan (SPMP)¹⁶²
- Borrow Pit Design and Site Restoration Plan¹⁶³
- Relevant Species Protection Plans (SPP)¹⁶⁴

4.100 A HMP¹⁶⁵ has been submitted in outline, to cover the management and monitoring of habitats and species during the operational period of the wind farm, although it is acknowledged that some measures would commence during the construction period. R15 would require the submission and approval by the LPAs of the HMP before any work on the project was commenced.

4.101 Through the provisions of the s106 Agreement¹⁶⁶, certain measures within the HMP would be carried out on land outside the application site. The "off-site obligation land" is land 13km south of Denbigh and 10km west of Ruthin. It excludes the application site and is identified on Plan 2 of the s106 Agreement.

¹⁵⁶ AD_042

¹⁵⁷ WR_37

¹⁵⁸ AD_042 App A

¹⁵⁹ AD_042 App B

¹⁶⁰ AD_042 App C

¹⁶¹ AD_058 (includes outline SWMP)

¹⁶² AD_042 para 1.5

¹⁶³ AD_042 para 1.5

¹⁶⁴ AD_042

¹⁶⁵ AD_073

¹⁶⁶ OD_010

- 4.102 Subject to some changes to the detailed wording of R9 of the draft DCO¹⁶⁷ the Councils are generally satisfied that it would provide adequate safeguards to enable detailed mitigation and monitoring proposals for relevant habitats and protected species during construction to be agreed and implemented. I deal with changes to the wording of R9 to secure these safeguards in Section 7 of my report¹⁶⁸. There is also general agreement as to the measures proposed in the HMP, although some changes are sought which I also address in Section 7. NRW is satisfied that the ES presents appropriate mitigation and monitoring to address potential construction phase impacts in respect of non-avian ecology, and that the HMP, which would be secured through R15, would generally provide appropriate mitigation for potential impacts on bird species¹⁶⁹.
- 4.103 There have been discussions between the applicant and NRW about the content of the outline HMP. NRW has flagged up those areas of the Plan in which they wish to see amendments in the SoCG with RWE¹⁷⁰. These are mainly detailed matters which can be negotiated prior to the final submission of the HMP. There are also some detailed matters in relation to the content and wording of the relevant requirements which are identified in the SoCG between RWE and NRW. Where these remain outstanding I deal with them in Section 7.
- 4.104 The main area of concern to the Councils relates to the pre-development tree clearance phase. NRW would carry out this phase, and as a result it does not form a part of the authorised development for which the DCO is being applied. NRW would carry out the felling in the same way that they undertake their normal forestry operations, which would not require any express consent under the planning acts. Nevertheless, the felling is carried out in accordance with UK Forestry Standard (UKFS) and NRW (formerly Forestry Commission Wales (FCW)) Guidelines which were agreed with the former Countryside Commission Wales (CCW) and Environment Agency Wales (EAW) (which have now been amalgamated within NRW).
- 4.105 Forestry good practice, including former FCW coupe survey methodologies, is designed to protect the environment, and protected species are subject to legal protection in any event. R17 of the draft DCO identifies the relevant guidance to be followed by NRW. The Councils¹⁷¹ argue that the pre-construction felling should be subject to more precisely defined controls. However, I

¹⁶⁷ WSC_037

¹⁶⁸ SoCG_001

¹⁶⁹ SoCG_002

¹⁷⁰ SoCG_002

¹⁷¹ WSC_037

note that in relation to the Brechfa Forest West DCO the SoS has concluded that the UKFS provides appropriate mitigation¹⁷².

- 4.106 In relation to the approval and implementation of the CMS and the HMP, a number of IPs were not satisfied that, through the relevant requirements, they should be subject to the approval of the LPAs. IPs argued that since the measures contained in these plans were essential to prevent harmful impacts on the ecology of the forest, there should be a higher level of control exercised over their final approval and enforcement.
- 4.107 However, consultation with NRW as the nature conservation body is required in R9 and R15 before the CMS or HMP are submitted to the LPAs for approval. A considerable level of work has already been undertaken to produce an Outline CMS and Outline HMP, and discussions have highlighted those provisions which NRW or the Councils would wish to see changes to¹⁷³. The LPAs would have the views of NRW before them when the plans are submitted for final approval, and they would have the ultimate veto in the event that the provisions of the plan were not adequate.
- 4.108 In relation to the enforcement of the provisions, it is an offence under s161 of the PA2008 for the terms of a DCO to be breached. It would be for the relevant Council to investigate any such breach, and subject to an offence being committed, to issue a notice of unauthorised development under s169 of the PA2008.
- 4.109 In these circumstances, where the LPAs have access to expert advice, it would be inappropriate to seek to assign the approval of the CMS or HMP to any other body.
- 4.110 For the European Protected Species (EPS) licence NRW sought further information to support the draft dormouse licence method statement together with some amendments to the method statement¹⁷⁴. Amendments to R15(2)(c) were put forward by RWE, and at the Mitigation and Requirements hearing, NRW agreed that the proposed R15 was sufficient to address their concerns¹⁷⁵. As a result there is not reason to consider that a European Protected Species licence should not be granted¹⁷⁶. No other EPS licence has been identified by any party as required, but the need would be reviewed through pre-development tree clearance and pre-construction surveys.
- 4.111 I deal with the report to inform a Habitats Regulations Assessment in Section 5.

¹⁷² WSC_022 para 16.5

¹⁷³ SoCG_003; 004; WSC_022 and WSC_037

¹⁷⁴ SoCG_002 p4

¹⁷⁵ WSC_022

¹⁷⁶ WR_029/RQ_1_010 para e)(i)

- 4.112 Whilst IPs raised other concerns about the impact of the project on wildlife such as frogs and red squirrels¹⁷⁷, no significant evidence has put forward to cast doubt on the conclusions reached by the Councils and NRW in relation to the findings of the ES and the proposed mitigation measures. With the changes to the wording of the requirements which I deal with in Section 7, I am satisfied that adequate provision would be made to mitigate and potentially enhance ecology and biodiversity within the application site. As a result there is no reason to refuse the Order on ecological grounds.

Environmental health impacts

Noise and vibration

- 4.113 Noise impacts are likely to arise from the proposed development in the short term during the construction phase, and in the longer term during the operational life of the turbines. There was concern raised by a number of local residents as to the noise which would be experienced during the construction of the project, in particular from the large vehicles which would be used to deliver the turbines, and blasting of rock from the borrow pits. However, working hours and delivery times would be the subject of control through the CMS and relevant requirements, and the construction period would be relatively short lived in comparison with the 25 year life of the turbines. I consider the impacts from construction later in this section of the report, but overall I consider that harm to the noise environment during construction would be controlled and of limited duration and would not be so significant as to weigh against the project.

Operational noise

- 4.114 It was the operational noise of the turbines themselves which caused most concern for objectors¹⁷⁸ and about which issues were raised by the Councils¹⁷⁹. NPS EN-1 recognises that excessive noise can have wide-ranging impacts on the quality of human life, through annoyance or sleep disturbance, and the use and enjoyment of areas of value such as quiet places and areas with high landscape quality. Para 5.11.4 sets out the matters which the applicant should consider in the noise assessment.
- 4.115 NPS EN-3 recognises that the noise created by wind turbines in operation is related to wind speed and is different to general industrial noise such that an additional assessment of this noise should be made. It then indicates that the method of assessing the impact of noise from a wind farm on nearby residents is

¹⁷⁷ WR_011 and WSC_030

¹⁷⁸ For example WR_009; 0020; 0023; 026; 027; 039; RQ_1_003; 009; RQ_2_007; CFdDCO_004 and AS_008

¹⁷⁹ LIR_001

described in the report "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97)¹⁸⁰. This was produced by the Working Group on Noise from Wind Turbines Final Report, September 1996 and the report recommends noise limits that seek to protect the amenity of wind farm neighbours.

- 4.116 A number of objectors questioned¹⁸¹ the validity of using ETSU-R-97 in view of its age, but in a footnote to NPS EN-3 it is stated "Notwithstanding the date of this report, the Government is satisfied on the balance of subsequent scientific research that its key conclusions (and in particular the limits it recommends) remain a sound basis for planning decisions." Para 2.7.56 then confirms that the applicant's assessment of noise from the operation of the wind turbines should use ETSU-R-97, taking account of the latest industry good practice, including any guidance on best practice that the Government may from time to time publish.
- 4.117 The "Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise" (IOA GPG) was published in May 2013 by the Institute of Acoustics after the CFWF application was submitted. The Document has been endorsed by the UK and Welsh governments as relevant good practice. The IOA GPG makes recommendations in relation to the different steps of the ETSU-R-97 procedure. The applicant has submitted a table¹⁸² which sets out a commentary as to whether or not the applicant's noise assessment undertaken in the ES¹⁸³ complies with the recommendations in the IOA GPG. This demonstrates that the assessment in the ES is consistent with good practice as set out in the IOA GPG.
- 4.118 Baseline noise levels were established at locations agreed with the Councils. The survey locations were taken as representative for the purposes of the ETSU-R-97 assessment at similar locations, and agreement was reached with DCC and CCBC as to how those were allocated¹⁸⁴. At the time of the surveys, account was taken of noise from the existing TMFG wind farm, and also of the affect of noise from water courses at some locations. The measurements accounted for the effects of site specific wind shear by using a 10m height reference wind speed derived from simultaneous wind speed measurements made at heights of 70m and 40m on a 70m anemometry mast installed on the site.
- 4.119 ETSU-R-97 defines noise levels for nearby noise sensitive residential locations which in planning terms are deemed to be acceptable. It does so by seeking to achieve an appropriate

¹⁸⁰ EN-3 para 2.7.55

¹⁸¹ For example WR_026; WSC_035 and WR_39

¹⁸² RQ_1_008 RWE responses to ExA's 1st written questions p37

¹⁸³ AD_025 ES Chapter 11

¹⁸⁴ WSC_032 7a confirms agreement on outstanding areas of difference

balance between the noise associated with a wind farm development and providing adequate protection of residential amenity. The ETSU-R-97 Guidelines recommend that the allowable wind farm noise limit be set either to a relative limit of 5dB(A) above the measured prevailing background noise level, or at a fixed limit according to which produces the highest value. At night the fixed limit is given as 43 dBLA90, and for the day time the limit is in the range of between 35 and 40 dBLA90.

- 4.120 Because noise levels vary according to wind speeds, ETSU_R_97 recommends that the limit is set for wind speeds up to 12 metres per second when measured at a height of 10m. Clearly a higher limit would apply at times of higher wind speeds, but the background noise levels would be correspondingly higher such that there would not be an increase in the difference between the two. The applicant has selected a day time fixed limit of 40 dBLA90, and has offered to maintain this limit for the night time¹⁸⁵. In the Councils LIR¹⁸⁶ the choice of the highest day time fixed limit of 40 dB(A) is questioned, and a level of 38dB(A) is sought.
- 4.121 It is the applicant's case that provided the development complies with the fixed limit in ETSU-R-97, then in planning policy terms the effects on amenity from increased noise levels should be given little or no weight¹⁸⁷. However, there is not a prescribed ETSU-R-97 day time noise limit, but a range. For CFWF the limit to be considered would be a fixed day time limit of between 35dB(A) and 40dB(A) rather than 5dB(A) above the background noise levels, since the fixed limit would be the higher value in this location.
- 4.122 EN-1 lists the matters to be included in a noise assessment of which "an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas" is one¹⁸⁸. This would indicate that the assessment of whether or not changes in the noise environment are acceptable is not simply a matter of identifying an ETSU-R-97 limit and then testing to determine whether that can be met. The first matter to be considered is whether an appropriate day time limit has been adopted.
- 4.123 ETSU-R-97 provides three criteria to be applied in deciding at what level between 35dB(A) and 40dB(A) the fixed day time limit should be set. These include
- The number of dwellings in the neighbourhood of the wind farm
 - The effect of noise limits on the number of kWh generated

¹⁸⁵ CLIR_002 para 11.8

¹⁸⁶ LIR_001 para 7.4.9

¹⁸⁷ WSC_033 paras 4.7 and 5.2

¹⁸⁸ EN-1 para 5.11.4

- The duration and level of exposure

In addition, ETSU-R-97 notes that the likely excess of turbine noise relative to background noise levels should be a relevant consideration.

- 4.124 One of the criteria for the selection of a SSA in TAN 8 is a relatively dispersed and limited number of residential properties in the vicinity. However, Clocaenog Community Council¹⁸⁹ points out that within the seven Parishes which adjoin the forest, there are some 918 dwellings. These are located between 0.2km and 2.5km from the application site boundary. As a result it is argued¹⁹⁰ that this is not a location with a small number of dwellings in the neighbourhood.
- 4.125 The baseline noise surveys¹⁹¹ show that the forest is an area which has particularly low background noise levels. Whilst areas to the north are affected by noise from TMFG, in the remainder of the forest noise events are limited to intermittent noise from the forestry operations and low levels of traffic passing through; and the sounds of nature made by birds, the movement of wind and the running of water in streams.
- 4.126 As one objector stated¹⁹², the experience of long periods with an absence of man made sounds would contrast markedly with the mechanical sounds generated by wind turbines. I agree that the experience of natural noise events¹⁹³ is quite different from that gained from the regular and mechanical noise produced by wind turbines. The low level of background noise, together with the characteristics of the noise events currently experienced within much of the forest, would support the setting of a lower level fixed day time limit.
- 4.127 The applicant considered¹⁹⁴ that BS4142 had limited if any relevance to an assessment of wind turbine noise, but in the absence of any other measure, the Councils pointed out¹⁹⁵ that it does provide some guidance as to the level of impact when comparing noise levels in relation to existing background noise. BS4142 says in comparing a new noise with background, that an 'A' difference of around 10dB or higher indicates a perceived doubling in loudness and that complaints are likely. A difference of around 5dB is of marginal significance. These margins relate to LAeq measurements. Where LA90 is used, as in the case of wind turbine noise, these claims would relate to 8dB and 3dB respectively.

¹⁸⁹ WR_018

¹⁹⁰ WR_018

¹⁹¹ AD_094 and WSC_032 Appendix 2

¹⁹² WSC_026

¹⁹³ Submission by Dr Penfold at open floor hearing evening session 28 January 2014 (HRG_016)

¹⁹⁴ As discussed at Environment Hearing (WSC_033 para 4.4)

¹⁹⁵ As discussed at Environment Hearing

- 4.128 There is no basis for these claims in published Government or Industry best practice guidance relating to wind farm noise. However, during my accompanied site inspections, I visited some of the properties which experience low levels of background noise, but which could be affected by increases up to and in excess of 8dB with CFWF. I also experienced the background noise level about 1km downwind of TMFG in a position where I was advised that the background noise was about 40dB. The difference in the noise environment when compared with that of a residence unaffected by wind turbine noise was significant. I therefore have no doubt that at properties which currently experience the quiet of the forest, the introduction of wind turbine noise up to a level of 40 dB(A) would have a noticeable impact on the noise environment.
- 4.129 Although the application site lies within an area of relatively low population density, a number of residential properties would be subject to a significant increase in the noise environment. The Councils' LIR summarises impacts on residential occupiers in Appendices 7 and 8¹⁹⁶. The determining factor in this assessment is the margin between the level of turbine noise downwind of the CFWF and the average background noise at the wind speed where the margin is greatest. Where the margin is from 5dB to 7dB, the impact is identified as moderate, and where the margin is 8dB or more, (when BS4142 indicates that complaints are likely) the impact is identified as major.
- 4.130 With CFWF alone, 15 properties would experience an increase in background noise levels in excess of 8dB, and another 17 properties would experience an increase in background noise levels of between 5dB and 7dB¹⁹⁷. With CFWF and all the operational and permitted wind farms, (the cumulative impact) the number of properties with a major noise impact would increase to 38, with 14 properties remaining with a moderate noise impact. ETSU-R-97 states that: "A single wind turbine causing noise levels of 40dB(A) at several nearby residences would have less planning merit (noise considerations only) than 30 wind turbines also causing the same amount of noise at several nearby residences¹⁹⁸".
- 4.131 Thus whilst there would be a significant number of properties in which the occupants would experience an increase in noise to a level at which BS4142 states that complaints are likely, the number needs to be considered in terms of whether it is proportionate to the scale of the project and the level of energy which would potentially be generated.

¹⁹⁶ LIR_001 (including para 7.4.19)

¹⁹⁷ LIR_001 (including para 7.4.19)

¹⁹⁸ ETSU-R-97 p65

- 4.132 Having regard to the scale and location of the proposed CFWF, it is inevitable that the occupants of a number of properties in the vicinity of the application site would experience a significant change in their noise environment. However, the duration of exposure to increased noise levels is a further matter to be taken into account when assessing the appropriate day time noise limit. In some locations in the cumulative situation, properties would be exposed to wind farm noise from different wind directions, thus increasing the duration of exposure.
- 4.133 However, the applicant points out that the assessment from which the levels of noise increase have been derived¹⁹⁹ assumes simultaneous downwind propagation from all sites. This would not occur in practice. This is illustrated by the examples produced to demonstrate directional effects as specific locations are exposed to noise from different wind farms, at different times, and in different wind directions²⁰⁰. Thus whilst examples of cumulative noise levels of 40dB(A) are predicted for a number of properties with the assumption of simultaneous downwind propagation, in practice, lower levels of noise would be experienced²⁰¹.
- 4.134 The other matter to be taken into account is the effect of noise limits on the number of kWh generated. There is no dispute that a reduction in the day time noise limit from the 40 dB(A) put forward by the applicant to 38dB(A) as sought by the Councils would require the operation of the wind turbines to be constrained and this would in turn reduce the energy output. For the WG to meet its targets for the production of renewable energy from on shore wind farms²⁰², the development of the SSAs to the level identified in the letter from the Welsh Minister for Environment and Sustainable Government in July 2011 is necessary. The CFWF would make a substantial contribution to the objective of 212MW to be provided in SSA(A). This consideration must be weighed against the number of residents that would experience a significant change in their noise environment. It also weighs heavily in favour of the higher ETSU limit sought by the applicant.
- 4.135 Furthermore, the permissions granted for Tir Mostyn and Wern Ddu are subject to daytime noise limits of 40dB(A). The Councils provided no evidence to demonstrate that circumstances in relation to the ETSU-R-97 criteria were different at these sites, and with these limits in place, the imposition of a cumulative limit of 38dB(A) on CFWF would be unreasonable.
- 4.136 In addition to their concern for the impacts of the project on the noise environment, the Councils argue that the daytime fixed limit

¹⁹⁹ AD_092 ES Annex 11.2

²⁰⁰ AD_094 ES Annex 11.4

²⁰¹ CLIR_002 para 11.7

²⁰² The Wales' Energy Policy Statement (March 2010) aims to have 4.5 KW/dp installed of onshore wind generation capacity by 2015/2017

for CFWF should be 38dB(A) in order make allowance for future wind farm development²⁰³ in the SSA. The concern is that a project such as CFWF could "sterilise" parts of the area from further wind farm development because the level of noise generation had already reached the higher ETSU-R-97 limit.

- 4.137 However, a constraint on noise levels from CFWF would reduce energy output, which seems to be a pointless exercise if the objective is to enable more wind turbines to be constructed. Such an approach could result in a larger number of wind turbines producing a similar level of output to that which could be achieved with CFWF alone.
- 4.138 In view of the location of the project within an SSA which has been selected as a location for wind farm development to meet WG targets, and having regard to the national need for renewable energy development set out in NPS EN-1 and EN-3, I agree with the applicant that there are significant benefits in allowing the ETSU-R-97 limit of 40 dB(A) to be applied for CFWF.
- 4.139 This is a very large scale project. Because of the very quiet noise environment in the majority of the forest, the introduction of wind turbine noise throughout the forest from north to south would have a significant effect on the noise environment for those who live in the vicinity or who use the forest for recreation. Whilst there is a subjective element to the perception of harm from wind turbine noise, the significant change in the noise environment is likely to be viewed as detrimental to those who have chosen to live in what is at present a remote and tranquil location.
- 4.140 I have found that the imposition of a 40dBA limit for the project is reasonable in the circumstances of the case, and EN-3 does state that where the correct methodology has been followed and a wind farm is shown to comply with ETSU-R-97 recommended noise limits, the decision maker may conclude that it will give little or no weight to adverse noise impacts from the operation of the wind farm²⁰⁴. However, that does not remove the need to recognise the harm which the noise from the wind turbines would be perceived to cause to those who live around the forest and who use it for recreation.
- 4.141 A number of IPs²⁰⁵ raised the issue of low frequency noise or infrasound, and referred to the matter as one which has repeatedly caused nuisance to residents in the vicinity of wind farms, but which has not been recognised as an issue in Government guidance.

²⁰³ LIR_001 paras 7.4.1 and 7.4.3

²⁰⁴ EN-3 para 2.7.58

²⁰⁵ See for example the submissions of Professor Emeritus Peter Cobbold WR_026, Ian Gardner WR_020 and Nantglyn Community Council WR_023

- 4.142 The applicant argues that vibration levels and infrasound noise sensitive receptors would be well below the thresholds of perception, and thus unlikely to lead to adverse effects. This is supported by the statement in EN-3 para 2.7.60 that there is no evidence that ground transmitted low frequency noise from wind turbines occurs at a sufficient level to be harmful to human health. On this basis the decision maker is unlikely to give any weight to claims of harm to human health as a result of ground transmitted low frequency sound.
- 4.143 Although a significant number of documents and references to newspaper articles and studies were submitted to the examination, the submissions included no evidence to indicate that there would be a problem of infrasound at the application site. In these circumstances the advice in EN-3 should prevail such that this matter does not weigh against the project.
- 4.144 The other issue of concern to IPs²⁰⁶ is that of amplitude modulation. Amplitude modulation (AM) is the regular variation of the broadband aerodynamic noise caused by the passage of the blades through the air at the rate at which the blades pass the turbine tower. ETSU-R-97 assumes that a certain level of AM (blade swish) is intrinsic to the noise emitted by a wind turbine and may cause regular peak to trough variation in the noise of around 3dB and up to 6dB in some circumstances. The noise assessment and rating framework recommended in ETSU-R-97 fully takes into account the presence of this intrinsic level of AM when setting acceptable noise limits for wind farms.
- 4.145 However, the position in relation to AM is evolving. Renewable UK (ReUK) is the body responsible for overseeing the development of wind energy in the UK. ReUK instigated research into the issue of AM in 2011, and the results were published in December 2013²⁰⁷. Whilst this research has yet to be endorsed by the Institute of Acoustics (IoA) or the Government, the research does indicate an increase in the level of understanding of the phenomenon. It recognises that in some circumstances the character and spatial distribution of the AM is altered, with a shift to lower frequencies, and an increase in modulation depth and high levels of AM occurring at large distances upwind or downwind. It is these characteristics which the study acknowledges cannot be explained by current models of normal AM.
- 4.146 The ReUK study finds that reported incidences of this other form of AM are relatively limited. However, it is now a recognised phenomenon and reports of the nuisance experienced by those who consider that they have been affected by it have raised public awareness and concern. Nevertheless, the ReUK study finds that there is nothing at the planning stage that can presently be used

²⁰⁶ WR_026; WR_023 and RWSC_001

²⁰⁷ CRD_017

to indicate a positive likelihood of this other form of AM occurring at any given proposed wind farm site, based either on the site's general characteristics or on the known characteristics of the wind turbines to be installed.

- 4.147 In the immediate term, the only guaranteed solution to mitigate harmful AM if it occurs in practice on a particular site is to cease the operation of offending turbines during those conditions under which the other form of AM is found to occur. The conditions leading to the other AM, and the characteristics of that other AM when it occurs, have been found to be very site-specific and would therefore need to be established specifically for each operational site considered.
- 4.148 The ReUK study puts forward a model condition which could be imposed on a planning permission to regulate the impacts of other forms of AM if they were to occur once the wind farm is in operation. However, at the completion of the CFWF examination, the suggested condition had not been endorsed by the IoA or the Government. It did not therefore represent latest industry good practice or Government Good Practice for the purposes of para 2.7.56 of EN-3. The IoA has indicated that the planning condition would need a period of testing and validation before it could be considered to be good practice, and the Councils agree with the applicant that it would not be reasonable to impose it as a requirement in the DCO in these circumstances.
- 4.149 RWE refers to the position for the Brechfa Forest West project. In that case the ExA was satisfied that until such time as relevant good practice is produced, complainants would be protected by the ability to bring a claim in statutory nuisance. Since the same provision is made in the draft DCO for CFWF²⁰⁸, the applicant argues that no requirement should be imposed to address any nuisance which might arise from AM.
- 4.150 However, the ReUK report represents progress which has been made since the publication of the SoS decision on Brechfa Forest West in the understanding of the forms of AM which cause annoyance. Whilst such forms of AM cannot yet be predicted, there remains a risk that other forms of AM may occur wherever a wind farm is developed. The ReUK study recognises that the effects can be experienced at large distances up wind and downwind from wind turbines. Having regard to the scale of the CFWF project and the extensive area which it covers, the potential area over which such effects could be experienced goes well beyond the properties for which there is a recognised impact from the scheme.

²⁰⁸ Clause 9(4) of the draft DCO exempts nuisance arising from noise attributable to the project from being protected by s158 of the PA2008

- 4.151 The impact of noise on the occupiers of properties is a planning issue, and mitigation through the imposition of requirements is recognised as necessary and appropriate. The pursuit of a statutory nuisance claim can be lengthy and cumbersome in comparison with the enforcement of a condition or requirement. With a project of the scale of CFWF, it is acknowledged that there would be significant impacts on those who live in the vicinity of the site. The application of the precautionary principle, in order to alleviate the risk of causing further harm both to those residents and to a larger number of people would in my view be reasonable and appropriate. I return to consider what if any requirement it would be appropriate to impose in order to provide protection against the possibility of other AM in Section 7 of the report.
- 4.152 A further issue relates to the use of a turbine model in the assessment of noise impact which may not be the model chosen for the project if it is constructed²⁰⁹. However, as the applicant points out, there is continual technological improvement to turbine models within the industry. Indeed, future models may be more efficient in terms of levels of noise emissions in relation to energy generation. It would not therefore be prudent for the developer to commit to a turbine model at this stage in the process.
- 4.153 At the stage where approval is sought for the details of the application if the DCO is granted, the applicant would be restricted from proposing any turbine which would have materially different effects to those assessed in the ES by R3 of the DCO. Furthermore, fears that a different model might result in increased noise can be alleviated by the imposition of a requirement as proposed in the DCO to restrict the levels of noise experienced at properties around the site. The terms of that requirement would apply regardless of which turbine model is selected.

Construction phase noise

- 4.154 The construction phase of the CFWF would cause noise and disruption to local residents, recreational users of the forest and to wildlife. However, the CMS is being developed in close consultation with NRW and the LPAs. Measures are proposed to ensure that the noise and disruption is minimised and mitigated as far as practicable, and R13 of the draft DCO would restrict hours of work and traffic movements.
- 4.155 The Control of Pollution Act 1974 would also provide two additional measures for controlling noise and vibration. The construction phase is for a significant but time limited period. Whilst some concerns were raised about the hours of work, there is no reason to consider that the impacts could not be controlled to a level which would not be significantly harmful to the amenities of those

²⁰⁹ WR_020 and AS_018

who live in and around the forest. As a result the hours proposed are reasonable for a project of this sort, and the impacts would not be so harmful as to justify the withholding of consent for the project.

- 4.156 Concerns are also raised about noise impact from traffic accessing the site, in particular during the construction period. However, the LPAs agree with the method of assessment, magnitude and significance of traffic noise as set out in the ES²¹⁰. With the imposition of R13 in the DCO, I have no reason to find that noise and vibration from traffic would be such as to justify the withholding of consent.

Air Quality

- 4.157 Public Health England (PHE)²¹¹ identified air quality in terms of traffic and dust generation as matters to be considered in the ES²¹². However, PHE later confirmed²¹³ that since the responsibility for assessing and regulating air quality lies with the local authority, it did not wish to raise or maintain any objection on air quality grounds if, in the local authority's opinion, the development is unlikely to result in either a breach of the air quality standards or a significant worsening of local air quality.
- 4.158 RWE has consulted with the Environmental Health Officers (EHO) of DCC and CCBC regarding the need for an air quality assessment. Since the Heavy Goods Vehicle (HGV) route avoids Denbigh, the LPAs do not consider that the additional road vehicle traffic would result in sufficient increase in vehicle traffic emissions to impact upon statutory air quality standards at receptors in proximity to the site or alongside public highways being used for access.
- 4.159 The main potential effect could be from the release of fugitive dust during construction or haulage activities. In particular the Councils would anticipate that significant dust could be released if not properly controlled during handling of aggregate in stockpiles, or storage and handling of excavated materials pending reuse or removal from site. Fine dust emissions would have the potential to contribute to PM10 concentrations at sensitive receptors, and coarser dust fractions to contribute to a more localised nuisance potential²¹⁴.
- 4.160 The Councils accept that potential for fugitive dust release could be appropriately controlled under the CEMP, which would be the subject of R9 of the DCO. It is anticipated that this would include as a minimum requirement various proactive measures which are

²¹⁰ AD_027

²¹¹ The statutory consultee on NSIPs in England and Wales

²¹² RR_237

²¹³ RQ_1_005

²¹⁴ LIR_001 para 7.6

listed in the Councils' LIR. R9 requires that the CEMP be approved by the LPAs prior to the start of construction work, so the LPAs would have control over the final content of the Plan. I am satisfied that there are no significant issues in relation to air quality which would weigh against the project.

Contaminated Land

- 4.161 Land contamination and the human health impact is another matter identified by PHE as a matter to be dealt with in the ES. CCBC is not aware of any potential contaminated land in the area either as a result of former industrial activity or other potentially polluting use which would be expected to have a significant impact on the development or surrounding land²¹⁵ and RWE obtained Sitecheck reports from the Landmark Information Group at the site feasibility stage²¹⁶. These confirm that the level of risk associated with the application site is not such that the site would be designated "Contaminated Land" within the meaning of Part IIA of the Environmental Protection Act 1990.
- 4.162 The CCBC EHO advised²¹⁷ that consideration be given to the potential for mineral bearing strata being encountered that could result in the excavation and release of ore minerals. Based on the information within the ES, RWE considers it unlikely that mineral bearing strata would be encountered during site works as the bedrock geology underlying the wind farm is sedimentary based rock. However if any localised mineral were to be extracted during excavation works, the controls and mitigation contained within Chapter 8 of the ES with regard to pollution prevention and sediment control would protect the air and water environment. This mitigation is included in the CEMP.
- 4.163 In the event that air borne mineral contaminants are released during extraction or reuse of site won materials, the measures to be incorporated in the CEMP would control any impact.
- 4.164 On the basis of the evidence provided in the ES, and during the examination, I am satisfied that there are unlikely to be any harmful effects arising from contaminated land.

Public Access and Recreation

- 4.165 The application site is crossed by a number of Public Rights of Way (PROW) used by walkers, cyclists and horse riders. It is also an area of Open Access under the Countryside and Rights of Way Act 2000, and NRW allows permissive access to the forest by horse riders.

²¹⁵ LIR_001 para 7.7

²¹⁶ OD_001 Health Impact Report

²¹⁷ LIR_001 para 7.7

- 4.166 Although there would be some interference with the use of the PROW during pre-construction tree clearance, this is a common and expected activity in the forest and appropriate management measures are normally put in place to maintain access wherever possible. During the construction of the project, it would be necessary for RWE to temporarily suspend the use of up to 15 PROW. For the PROW in DCC, the Council is to retain the power to make temporary traffic orders, but CCBC is content for Orders in their area to be covered in the DCO.
- 4.167 The timing and extent of interference in the PROW would be largely governed by the CMS, but the Access Management Plan²¹⁸ (AMP) would secure the reinstatement of any PROW which is disrupted. The applicant is proposing a new multi user route to the south of the project to link Bod Petryal to Llyn Brenig, which would be available during the construction and operation of the project in mitigation of the disruption that may be caused to the use of PROW. This route would also be at a distance in excess of 200m²¹⁹ from any wind turbine.
- 4.168 The final AMP would be subject to R16 of the draft DCO which requires the applicant to consult with NRW prior to the submission to the LPAs of the document. Final approval must be gained before construction can commence so the LPAs would be in a position to control the content of the AMP and secure the measures appropriate and proportionate to the project.
- 4.169 There would be a permanent diversion to FP19. The route is currently impassable having been planted with forest trees. It would be re-routed for the operational phase of the CFWF. The original proposal from RWE was to re-route the path to follow a line greater than tip height from Turbine 19. The end point would be moved eastwards to join more directly with the Foel Frech bird hide and the link to Foel Frech that joins FP38. However, the Councils would wish²²⁰ to formalise the existing Foel Frech link between FP19 through to FP38. Agreement with NRW would be required, but RWE has indicated that the changes sought to the provisions for FP19 could be delivered through the AMP. It would therefore be a matter for negotiation between the Councils, RWE and NRW post any consent.
- 4.170 There is some dispute as to the extent to which the forest is used by horse riders. The former FCW activity log only records organised rides within the forest so is not representative of private use. The Quality of Visitor Experience Survey of 2011 found that of 65 visitors to the forest, only 2% were horse riding or pony trekking²²¹. The layout of the project is such that some turbines

²¹⁸ AD_056

²¹⁹ The separation distance recommended by the British Horse Society

²²⁰ WSC_032 6c) and WSC_037 Article 11 and 13 (p5)

²²¹ AD_017 para 7.5.3.17

would be located within 200m of the tracks used by horse riders, and also the bridleway/byway open to all traffic. The British Horse Society (BHS) promotes a separation distance of 200m²²² in order to limit the effect of wind turbines on horses which may react badly to the sight and sound of the turbines. Riders of horses that would be nervous or upset by turbines would be likely to feel constrained from using routes which passed in close proximity to the turbines, and this would restrict access by horse riders to the forest.

- 4.171 I accept that the wind farm would only cover some 37% of the forest, but it would extend from north to south through the forest such that a number of the paths between the east and western parts of the forest would be affected at some point by wind turbines in close proximity. However, the BHS separation distance is advisory and has not been adopted in any planning policy. The new multi user route to the south of the forest would provide some compensation for the constraints which the wind turbines might cause for some riders. A further off road bridleway to link Isgaer-wen to Nilig was discussed during the Environment hearing²²³ and the Council indicated this might be achieved by granting permissive rights to horse riders to use a short section of FP38. RWE indicated that it is sympathetic to this request²²⁴, but such a right would need to be granted by NRW. It therefore remains a matter which would need to be negotiated as part of the AMP. In any event, the forest track between T17 and T18 would provide a similar separation distance to any upgraded FP38.
- 4.172 I heard submissions²²⁵ from residents who use the forest for horse riding, or who provide bed and breakfast for visiting riders with their horses. Clearly the presence of the wind turbines would alter the manner in which the forest could be used by riders, in particular if they have horses which would be nervous of the wind turbines. However, there would be alternative routes and other parts of the forest which would be further from the turbines and available for horse riders to use. Therefore although the routes used by some riders through the forest would need to change, the forest would not become unusable by horse riders.
- 4.173 Whilst there is scope for further improvements to the provision for access once the project is operational, which could be negotiated through the AMP, the Councils are satisfied that there would not be major impacts on public access and recreation within the application site²²⁶. Clearly the environment of the forest would change through the noise and visual impact of the turbines, but there would be no overall loss of PROW, as FP19 would be re-

²²² AS_011 and RR_007

²²³ Environment Hearing 22 - 23 January 2014 (HRG_009 to HRG_014)

²²⁴ WSC_033 para 6.4

²²⁵ At open floor hearings on 28 and 30 January 2014 (HRG_015, HRG_016 and HRG_022)

²²⁶ LIR_001 para 12.8

routed and accessible, and a new southern route would be provided by the applicant. In these circumstances I agree with the Councils' assessment and find no overriding harm in terms of impact on public access and recreation.

Hydrology and Geology

- 4.174 The applicant has carried out desk studies and field surveys to establish the hydrological, hydrogeological and geological conditions within and around the application site. The study area included watercourses and tributaries which either originate within the site or which pass through the site. By including the downstream areas outside the site, the study covered an assessment of potential off-site impacts on flood flows, private water supply sources, downstream dependent environmentally designated sites and fisheries.
- 4.175 Chapter 8 of the ES identifies the environmental designations and relevant legislation and planning policies that were taken into account, including relevant Directives, national planning policy in Wales and development plan policy in Conwy and Denbighshire. An assessment against NPS EN-1 and EN-3 is set out in the applicant's written representations²²⁷. The methodology adopted in the study is set out in the ES section 8.4. Section 8.10 considers the cumulative impacts with other existing or permitted wind farms.
- 4.176 EN-1 paras 5.15.1 to 5.15.10 are concerned with the adverse effects that development can have on the water environment during the construction, operation and decommissioning phases. Potential impacts from the application project would be on surface water, groundwater, private water supplies (PWS) and soil, including peat. In this case there would also be pre-development tree clearance.
- 4.177 A Surface Water Management Plan (SWMP) would be developed to form part of the CEMP, to be agreed with CCBC and DCC in consultation with NRW before any construction work would begin. The CEMP would make full provision for the protection of water quality and would include an Emergency Response Plan (ERP). In the event of an emergency pollution incident, emergency response procedures would be instigated in accordance with the ERP²²⁸.
- 4.178 During pre-development tree clearance there would be potential for turbid runoff to enter watercourses. However, activities would be undertaken in accordance with the Forestry Commission's Forests and Climate Change Guidelines and the UKFS. As a result the impacts would be no different from those which result from normal forestry operations.

²²⁷ WR_036 Chapter 8

²²⁸ AD_042 ES Annex 3.1

- 4.179 During the construction of the project there would be the potential for an increase in sediment loading within runoff from the areas the subject of construction activity during periods of heavy rainfall. Clearly this would depend upon weather conditions. Monitoring of impacts and mitigation provisions would be in place under the CEMP, and NRW has sought a buffer between any watercourses and construction activities of a minimum of 30m, which would be required through the DCO. With the proposed measures in place, the likelihood of turbid runoff from entering watercourses would be minimised.
- 4.180 In addition during the construction period, there could be accidental spillages of pollutant used on site, but the buffers would help prevent spillages from entering water courses. Impervious storage bunds would also be used to prevent leakage of potential contaminants to nearby surface water features.
- 4.181 The other potential source for the pollution of groundwater would be through the pouring of concrete turbine foundations. Measures would be in place to control concrete pouring and the dewatering or use of geomembranes to limit groundwater contact with concrete would restrict any pathway to groundwater. In any event, any migration of concrete to groundwater would only occur for the short duration until the concrete has set. The foundations and bases of the turbines would be made using sulphur resistant concrete which would not degrade when in contact with acidic water. The turbine bases would remain in place after decommissioning of the turbines and NWWT raised concerns about the long term effects on hydrology²²⁹. However, with the use of this material there would be no anticipated effects in the long term on the groundwater environment.
- 4.182 No discernible change in downstream water quality is expected in the Afon Clwyd and Afon Alwen catchments. Monitoring of water quality would take place prior to and during any pre-development tree clearance or construction activity, and would continue into the early stages of the operation of the wind farm to demonstrate mitigation measures remained adequate and effective.
- 4.183 All the pollution prevention controls applied during the construction process would be in place for the decommissioning phase.
- 4.184 With the avoidance measures to be taken as part of the design of the project, and subject to the imposition of appropriate and necessary requirements in the DCO, I agree with CCBC and DCC that the project would meet the requirements of paras 5.3.3 to 5.3.4 of EN-1 with respect to the identification and assessment of geologically designated sites; paras 5.7.4 to 5.7.8 with respect to

²²⁹ WR_37 raises concerns

the assessment of flood risk and paras 5.15.2 to 5.15.3 with respect to the assessment of water resources. With regard to the consideration of hydrological, hydrogeological and geological environments, the Project would meet the requirements of the DLDP and of the CLDP²³⁰.

- 4.185 NRW have concerns about the potential for significant water pollution impacts from construction works associated with the development on the River Alwen and its sub-catchments which feed into the River Dee and Bala Lake SAC, and advise that construction activities which might affect the River Alwen and its sub-catchments 2 to 5 should not be undertaken concurrently with felling works²³¹. I address this matter in Section 5 relating to HRA.

Private Water Supplies (PWS)

- 4.186 One of the main issues which was the subject of extensive submissions by IPs is the potential for impact on PWS. There are about 85 properties within 2km of the application site which have PWS²³². Most PWS are from groundwater, but there are some surface water supplies, and most are down gradient of the proposed turbines and the areas for construction activities. Properties with PWS are generally far from any public water supply and PWS are relied upon for livestock and general agricultural use as well as domestic use.
- 4.187 Clearly a dwelling is not habitable without a water supply, and a clean water supply is also essential to the livelihood of those engaged in agriculture. IPs have expressed²³³ their fear of the consequences of any pollution of their water source or disruption in supply, and expressed strong views that some form of indemnity should be put in place to provide compensation for any impact on a PWS. No such indemnity has been proposed by the applicant.
- 4.188 The applicant has carried out a risk assessment and identified those properties with hydrological connectivity to the parts of the forest which would be subject to disruption if the CFWF is constructed. NRW and the Councils criticised two aspects of the exercise carried out by RWE. It was not agreed that all properties with PWS had been identified, since there are properties which are not known to the Councils or NRW. NRW requested²³⁴ that provision be made in a Communication Protocol to address this matter. The Protocol would be included within an ERP which would form part of the CEMP. Thus this is a matter which may be addressed as the details of the CEMP are finalised after any consent has been granted.

²³⁰ SoCG_001

²³¹ SoCG_004 p5

²³² AD_019 para 8.5.11.1

²³³ For example: WR_002; 003; 005; 009; 010; 018 and many others

²³⁴ SoCG_004 App 1 R9

- 4.189 The applicant identified 13 properties considered to have the most direct hydrological connectivity with the areas of the forest in which development would take place, and these are listed as Tier 3 in the assessment²³⁵. Additional properties considered to be at risk, including farms with livestock, are identified by the Councils²³⁶. All Tier 3 properties are proposed for monitoring in accordance with the CEMP, and the additional properties identified by the Councils would be included²³⁷.
- 4.190 Water quality monitoring would take place before any works commenced to establish the baseline quality. Monitoring before, during and after development would identify any harmful impact, but such an impact would need to be dealt with as a matter of urgency and provide for the short and longer term. The ERP makes provision for an alternative temporary supply to be provided whilst the issues are resolved and rectified. Any damaged supply infrastructure, including filters, would be replaced in the event that a PWS was to become contaminated with sediments. Water would be tankered to properties and temporary water storage tanks would be provided. IPs are concerned that tankers would not be able to access some properties during bad weather conditions but the applicants have stated that an appropriate vehicle would be used where necessary.
- 4.191 The Councils are satisfied that the communications strategy and proposed mitigation measures to be put in place should water quality or flow be affected as a result of the development are adequate, provided that the measures are translated into practice²³⁸. Clearly it would be a matter for the Councils to enforce the measures, and I have no doubt that IPs with PWS would ensure that the relevant Council is informed of any shortcomings.
- 4.192 The Councils have identified further detailed matters which would need to be addressed. These include the manner in which complaints would be reported and investigated; what happens in instances when the cause of interruption of supply is disputed, and how such disputes would be resolved; and how farms which are subject to agri-environment schemes and which are contractually obliged to maintain water quality would be dealt with in the ERP²³⁹. Requirement 9 to the submitted DCO has a clause which provides for the communications protocol and mechanism for investigating complaints to be included within the CMS, so the detailed matters of concern to the Council may be addressed before any development is commenced.

²³⁵ AD_062 ES Annex 8.5 and AD_019 Table 8.17

²³⁶ LIR_001 para 10.7.21

²³⁷ CLIR_2 para 8.2

²³⁸ WSC_032 p2 item 5

²³⁹ WSC_032 p2 item 5

- 4.193 Mitigation measures incorporated within the CEMP, provided for in R9 as part of the CMS, would minimise the risk of a harmful impact on the water environment which feeds the PWS. The Councils would have the responsibility to ensure that the CEMP is implemented in its approved form, and the various monitoring provisions would provide them with the information necessary to ensure that effective mitigation was being achieved. Subject to the resolution in the CMS of those detailed concerns raised by the Councils²⁴⁰, an appropriate communications protocol and ERP could be put in place to deal with the concerns of residents with PWS and their complaints.
- 4.194 In accordance with the terms of the relevant requirements in the DCO, development could not commence on the application site until the CMS and all the supplementary plans required to protect PWS have been approved by the Councils. NRW and the Councils would therefore have control over the final form and content of the provisions to protect, and provide the necessary information on the condition of, water resources. NRW and the Councils would also have control over the final form and content of the ERP to ensure that alternative water supplies could be provided immediately to any property where the PWS might be affected by the project. In all these circumstances I consider that the provisions which are proposed to be put in place by the applicant are appropriate to secure the continued supply of uncontaminated water to those properties and agricultural enterprises which are dependent on PWS in the vicinity of the application site.

Flooding

- 4.195 Flooding is another issue raised by objectors. In particular there is concern that the loss of forest trees and the impacts of the development of the CFWF with the large concrete bases for the turbines, would increase the amount of runoff from rainfall over the forest. The flooding which occurred on the Glasdir Estate in Ruthin in November 2012 is given as an example of the potential consequences of tree loss²⁴¹.
- 4.196 The application site is within Zone A in TAN 15 "Development and Flood Risk", being at little or no risk of fluvial or tidal/coastal flooding. Any fluvial flood risk would be limited to watercourse crossing points, and minor surface water flooding may occur at existing forest crossing points, when storm flows exceed culvert capacities or culverts become blocked. To assess any potential risk of flooding downstream from the application site, and any other risk of flooding from groundwater, surface water runoff and artificial drainage, a high level Flood Consequences Assessment (FCA) has been carried out²⁴². This considers sources and

²⁴⁰ WSC_032 p2 item 5

²⁴¹ WSC_014

²⁴² AD_061 ES Annex 8.4

pathways of flooding, together with drainage design arrangements for the project.

- 4.197 The FCA takes into account the long term presence of the impermeable concrete turbine bases and other concrete surfaces which would be introduced as a result of the project. It also takes into account the effects of forest clearance in surface runoff and catchment flow regimes. Clocaenog Forest is likely to experience high runoff rates during extreme rainfall events and snowmelt. The main flood risk is therefore the potential for an uncontrolled increase in surface water runoff rates effecting downstream properties.
- 4.198 The assessment identifies mitigation for the management of surface water runoff from the developed areas of the application site, including a drainage strategy. With the implementation of the mitigation measures, the FCA concludes that there would be a negligible risk to the development and surrounding land from flooding with no increased risk to downstream properties. A SWMP²⁴³ would form part of the CEMP, which would include the use of SuDS to prevent an increase in overland water flow.
- 4.199 The FCA has been considered by the Councils, and subject to the mitigation measures included in the FCA, and the adoption of good forestry practice in the pre-construction felling stage, they state²⁴⁴ that it is unlikely that there would be any unacceptable impacts on the local hydrology in terms of flood risk. I have considered the evidence submitted by the applicant, and have no reason to disagree with the Councils.

Impacts on Residential Amenity

- 4.200 The matters which are most likely to affect the residential amenity of nearby occupiers are noise, visual impact, shadow flicker and concern about impact on PWS. In relation to PWS, I have considered the measures proposed in mitigation together with those to be put in place to deal with any emergencies. Since I have found that the risk of loss of clean water supplies for any significant time is negligible, this issue is not considered further. I deal with the remaining issues of noise, visual impact and shadow flicker in this section.
- 4.201 The applicant's assessment of impacts on residential amenity²⁴⁵ included 51 individual properties or small groups of properties, comprising some 349 properties in total, within a 5km radius of the application site. This considered the potential impact in terms of the likely change in views that would result from the

²⁴³ AD_058 ES Annex 8.1

²⁴⁴ LIR_001 para 10.9

²⁴⁵ AD_048

introduction of the CFWF. Shadow flicker is considered as part of the ES²⁴⁶.

Noise

- 4.202 With the imposition of an appropriate requirement in the DCO, overall noise levels at residential properties in the vicinity of the site would be maintained at or below 40dB. This is at the top of the range of noise levels identified in ETSU_R_97 as offering a reasonable degree of protection to the wind farm neighbour without being unduly restrictive on development which is recognised as having wider national and global benefits. Nevertheless, the Councils identify some 38 dwellings where the cumulative effect of noise from all existing and permitted wind farms on dwellings would increase background noise levels by more than 8dB²⁴⁷. Clearly for those who have chosen to live in a remote rural location where, apart from noise from forestry operations, the main sources of noise are from natural features such as streams and birdsong, this would be a significant change to their noise environment.
- 4.203 The ETSU standards are for guidance, they are not absolute values. EN-3 para 2.7.58 states that where the correct methodology has been followed and a wind farm is shown to comply with ETSU_R_97 recommended noise limits, the decision maker may conclude that it will give little or no weight to adverse noise impacts from the operation of the wind turbines. Nevertheless, it was clear throughout the examination that the change to the noise environment for the inhabitants of dwellings in the vicinity of the application site would not be welcome. I accept that harm to the current level of residential amenity caused by such a degree of change in background noise levels should be recognised as being in conflict with Policy NTE/7d) of the CLDP and Policy VOE 9ii) of the DLDP.

Visual amenity

- 4.204 EN-3 states at para 2.7.48 that modern on-shore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around the site. I have considered the impact of the visual amenity in terms of the landscape around the site earlier in this section of the report. I now turn to consider the impact on the visual amenity of residential properties.
- 4.205 The applicant's assessment describes the likely change in views that would result from the introduction of the CFWF. The assessment covers all individual properties within 0-2km of the

²⁴⁶ AD_029

²⁴⁷ LIR_001 Appendix 8

project, and groups of properties within 2km and 5km of the project²⁴⁸. Within a distance of 2km from the nearest turbines, 11 properties are identified for which there would be a major change in view²⁴⁹. A further 5 groups of properties within 2km and 5km of the site would also be likely to experience a major change to views²⁵⁰.

- 4.206 It is an established principle in planning law and practice that private views are not a planning matter. However, PPW states that: "The Courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such an approach should be based on general principles, reflecting the wider public interest (for example a standard of good neighbourliness) rather than the concerns of the individual."²⁵¹
- 4.207 The level at which an impact on amenity becomes unacceptable, or the standard which is referred to in PPW as 'good neighbourliness', has been addressed in a number of decisions by Inspectors in planning appeals. In particular the applicant refers to the "Lavender test" which has been adopted as a principle in a number of cases²⁵². Harm to residential visual amenity is found to occur when turbines are present in such number, size, and proximity that they represent such an unpleasantly overwhelming and unavoidable presence in main views from the house and garden, that the property is likely to become an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live.
- 4.208 Nevertheless, even where the change to a view may be described in these terms, such effects would fall to be weighed in the balance with the wider public benefits which the development is designed to achieve. In this case, the applicant's assessment suggests that the range and scale of the visual impacts on residential amenity should be accepted in the light of the TAN 8 SSA policy.
- 4.209 The Councils consider that the development would result in changes substantially altering the views and visual amenities of 56 individual properties and property groups within 5km of the application site²⁵³. Whilst other wind farms may be an existing feature within some of these views, and most people within the area would be familiar with the sight of wind turbines, the magnitude of change which would result from the CFWF would in the Councils' view, make the impact considerable. Having regard

²⁴⁸ AD_048 App A

²⁴⁹ AD_048 p15 to p16 Table 3

²⁵⁰ AD_048 Table 4 p16

²⁵¹ AD_048 para 1.1.3.1 quote from The Welsh Assembly Government. (2012) Planning Policy Wales Edition 5. para 3.1.7

²⁵² AD_048 paras 1.1.3.5 to 1.1.3.12

²⁵³ LIR_001 para 6.2.6

to the scale of the CFWF in comparison to that of consented wind farms in the SSA, I agree with the Council. CFWF in itself would make a significant change to the outlook for a large number of residential properties.

- 4.210 I visited a number of dwellings in the course of my accompanied site visits subject to different grades of change within the applicant's assessment²⁵⁴. For example, Isgaerwen is an example of a property identified as subject to a major change, whilst Hafoty Newydd is an example of a minor impact, and Hen Ysgubar is an example of moderate change. As a result I gained a full appreciation of the degree of change in visual amenity which was likely to occur as a result of the CFWF.
- 4.211 Taking Isgaerwen, (33) the main outlook from the property is south to south east from within the expansive gardens and main living areas of the house. Up to thirteen turbines of the CFWF could be visible, seen over a wide angle of view, up to their full height and at varying scales. Eight turbines are likely to be visible as hubs and blades and one as blade tips. Turbines to the southeast would be seen in front of the horizon, and in views to the south, the consented turbines at Nant Bach would be visible as an array across an undulating landform.
- 4.212 This is an example of a property which would experience a major change in visual amenity as the turbines would appear across panoramic views from the property. A degree of separation would be provided by the pasture between the house and the edge of the forest, and with the nearest turbine at about 1.52km, so it is unlikely that occupants of the property would have the feeling of living within the wind farm. However, there would clearly be a significant change to the views currently enjoyed by the occupants, and they consider that this impact has prevented the sale of their property²⁵⁵.
- 4.213 There is a degree of subjective judgement in any assessment of the impact of wind turbines, and it is likely that some potential purchasers might not choose to live in such proximity. However, in view of the degree of separation between Isgaerwen and the turbines, I consider that the level of impact would not be so severe as to result in a property would become wholly unattractive as a place to live.
- 4.214 This level of impact represents the significance of the change likely to be experienced by a number of residents of the properties identified as experiencing major change in the applicant's assessment. This is not disputed by the Councils. However, EN-3 recognises that such impacts are an inevitable consequence of large scale wind farm development, and in this case the

²⁵⁴ AD_048

²⁵⁵ WR_039

application site has been specifically identified to accommodate such development. In general terms therefore the high level of change in the visual amenity of these properties is outweighed by the benefits of a major wind farm development which accords with the TAN 8 policy for SSA(A) and is urgently required in the public interest to provide for renewable energy.

- 4.215 Nevertheless, in respect of four properties the Councils consider the change would be so substantial that an unacceptable and overbearing impact would be experienced by the residents²⁵⁶. These are the following: Cruglas (1), Hafoty hendre (3), Crud y gwynt (11a) and Hafod Olygfa (11b)²⁵⁷.
- 4.216 In response to the Councils' concerns, the applicant has put the view that a project of the scale proposed would be required if the SSA is to achieve its capacity target. Consequently potential effects on the dwellings located in and around the forest are inevitable and accepted in terms of Welsh national planning policy. However, I consider in detail the likely impact on each of those properties in detail, in order to assess whether the level of harm to residential amenity might exceed an acceptable level, even for a project in SSA(A) which would accord with TAN 8, and having regard to the advice in EN-3.

Cruglas

- 4.217 The dwelling known as Cruglas (1) is orientated northwest and southeast. A number of the Tir Mostyn Wind Farm turbines are currently visible from the access track.
- 4.218 It is likely that nine turbines for CFWF would be visible within and around the property in views towards the south round towards the northwest above the horizon. The applicant's assessment indicates that from the access track three of the proposed turbines would be visible down to the lower part of the tower and at a large scale in view of their proximity. Four turbines would be visible down to the tower, two to the hub and two as blade tips. Other turbines would be set within upland rotational forest, with the lower parts of the towers being screened by the trees. Visibility would also be likely from the property and farmyard, but this would be reduced due to filtering by mature trees and filtering or screening by forest and landform. Overall, views may also be partially screened by the landform rising to the west.
- 4.219 The surrounding pasture would provide separation between the property and the forest, and the forest in turn would provide separation from the turbines. However, NRW data indicates that an area of forest to the east of the property, extending towards turbine 19, is likely to be felled in c.2017 and subsequently

²⁵⁶ LIR_001 para 13.1.3

²⁵⁷ AD_048 Table 4 and Appendix A

restocked. Smaller areas of forest would remain between this newly restocked area and the property, which might assist with continuing to provide some separation in the view. However, with the tree felling, the major part of the tower and blades of turbine 19 would be unscreened. It is also likely that Turbines 18 and 23 would be highly prominent in views from within the curtilage of the property.

- 4.220 There would be a large number of turbines visible to a greater or lesser extent from this property. For the closest of the turbines, at a distance of some 0.79km, there would be views of the towers, hub and blades. As a result I consider that the occupants of Cruglas would have little respite from the physical presence of the wind farm. Views from within the dwelling itself may be more limited, but the presence of the turbines would be difficult to avoid when moving around the grounds or accessing the property. I agree with the Council. There is a risk that the project would have such an overbearing impact on the residents' living conditions that Cruglas would become an unattractive place in which to live.
- 4.221 In the case of Cruglas, it was argued on behalf of the occupants of the property at the hearings²⁵⁸ that there should be some form of compensation payable for the impact on the living conditions of the residents. However, the applicant's position²⁵⁹, that no property would experience such harmful impacts on residential amenity that the dwelling would become an unacceptable place in which to live, remained unchanged throughout the examination. As a result there was no acceptance by the applicant that any compensation outside of that which would be required by law, should be paid.

Hafoty Hendre

- 4.222 Hafoty Hendre (3) was being renovated at the time of my inspection. It is orientated to face east, with views to the west enclosed by a barn and rising land form. The proposed wind turbines would be north east, east and south east of the house. Views to the east are open and panoramic across agricultural fields towards the upland rotational forest in which the CFWF turbines would be located. There is some immediate enclosure to the garden by a low stone wall, but this would not screen turbines within the main view eastwards, and where they are not screened by forest, turbines would appear in the panorama extending from the north through to the southeast of the property.
- 4.223 From the applicant's assessment²⁶⁰ four widely spaced turbines (28, 29, 30 and 31²⁶¹) are likely to be visible at a larger scale than

²⁵⁸ WSC_029

²⁵⁹ WR_036 p16 to p17

²⁶⁰ AD_048 Appendix A A.8 to A A.10

²⁶¹ AD_012 Figures 6.3A and 6.3B

the other turbines due to their location at a minimum of 0.82km from the property. Whilst the lower part of the towers may be screened by forest trees, since the trees are no more than about 20m in height, a large part of the towers and the whole of the blades would be visible. Seven turbines are likely to be visible from mid tower upwards at varying scales, twelve turbines as hubs and blades, and the blades of a further eight.

- 4.224 In addition to the CFWF turbines, the operational turbines at Tir Mostyn and Foel Goch may be visible in views to the north, where not screened by forest, at a smaller scale than the Clocaenog turbines, due to their location further away. Blades of the consented Brenig turbines may also be visible in this view. Beyond the southernmost Clocaenog turbines in views southeast, the consented scheme at Derwydd Bach would be visible at a smaller scale due to distance. Wern Ddu turbines may also be visible beyond Derwydd Bach, on the distant horizon to the southeast. In views to the southwest, the consented turbines at Nant Bach would be visible. However, it is the new turbines proposed for the application project which would have the most immediate and significant impact on the outlook from the property.
- 4.225 The owners of Hafoty Hendre did not object in principle to the application project. However, they work on the surrounding land for much of their lives, and consider they would be subject to the most significant impact. In particular they requested that turbine Nos 28 and 31 be deleted from the scheme. However, in view of the position taken by the applicant, (4.221 above) no changes were put forward.
- 4.226 In the use of the garden, and when travelling to and from the property, the presence of wind turbines would be inescapable. Furthermore with four of the wind turbines visible and at such proximity to the main outlook of Hafoty Hendre, I consider that there is a risk that the future occupants would find the impact of the CFWF so unpleasant, overwhelming and oppressive that the dwelling would become an unattractive place in which to live as a result of the development of the CFWF.

Crud y Gwynt

- 4.227 Crud y Gwynt (11a), is a bungalow with two main aspects to the west and east. The CFWF would lie from the north west, west and south-south west of the dwelling. Views to the west and north are enclosed by hedging to the garden boundary. It is unlikely that the turbines would be seen from within the bungalow due to the filtering of views by the hedge, and since the property is set below the level of the boundary.
- 4.228 However, direct views would be likely from open areas of the garden and the driveway towards a broad spread of turbines set within upland rotational forest across 180 degrees of the view.

Turbines would appear above the rising landform. The applicant states²⁶² that six turbines would be likely to be visible to much of their full height at differing scales. From the wireframes these appear as turbines 15, 16, 17, 18, 19 and 23²⁶³. An additional nine turbines would be likely to be visible from the hubs upwards. Three turbines would be likely to be visible as blade tips.

- 4.229 Whilst the open pasture across which the turbines would be seen would provide some separation between the property, and the turbines would be set within the forest, there would be a wide angle of views from the residential property. NRW data indicates that an area of forest between turbines 17, 18 and 19 is likely to be felled and restocked between 15 to 20 years into the lifetime of the project (c.2032 to c.2037) and visibility of turbines may increase during this time period whilst the new forest stock becomes established.
- 4.230 The minimum distance is from turbine 18 at 0.91km. As with my findings in relation to Cruglas and Haffoty Hendre, in such proximity to a number of wind turbines clearly visible above the forest trees from views around the property, the occupants of Crud y Gwynt would have little respite from the visual presence of the wind farm when outside and accessing their property. I find that there is a risk that this would have an overbearing impact on the residents' living conditions such as to make Crud y Gwynt an unattractive place in which to live.

Hafod Olygfa

- 4.231 Hafod Olygfa (11b) is situated to the southeast of the minor road which runs along the ridge, towards the existing wind farm at Tir Mostyn and Foel Goch. The house is built into the north eastern facing slope with expansive views east, north and south over fields towards an undulating skyline. A large double-height window forms part of the frontage on the north eastern side.
- 4.232 The operational turbines of Tir Mostyn and Foel Goch appear in views to the southwest at varying scales. The consented turbines of Brenig would appear within the existing turbines. The Clocaenog turbines would appear within and to the south of the existing Tir Mostyn and Foel Goch turbines, at varying scales. Any vegetation surrounding the property would be unlikely to be mature enough to screen the views.
- 4.233 Changes to views from the residential property would occur, and concern is raised by the current occupier²⁶⁴. The key issue from this property is the number and spacing of turbines in views to the south. The nearest CFWF turbine (no1) would be just over 1100m

²⁶² AD_048 p28 para A.33

²⁶³ AD_012 Figure 6.11a.A and 6.11a.B

²⁶⁴ RR_101

from the dwelling. The wireframe²⁶⁵ demonstrates that the CFWF would add to the number of wind turbines and widen the angle of views from which they would be seen from parts of the grounds and from the approach to the property. However, the main outlook from the property is to the east and west, so the views from within the dwelling would not be dominated by wind turbines. Whilst there would clearly be a major effect on views from around the property, having regard to the existing proximity of the house to the TMFG turbines, the additional impact on residential visual amenity from CFWF is not in itself likely to be so detrimental to the amenity of the property that it would add to its character as an unattractive place in which to live.

Conclusion on the impact on the four properties

- 4.234 In considering whether the impact of the project would have the effect of making a property an unattractive place to live, I consider that the impact of any change in the noise environment should be included in the assessment. The change from a property in a quiet and remote location away from any man made structures to one in close proximity to tall mechanical machinery which would be a regular source of noise should in my view be considered as a whole.
- 4.235 For Cruglas the overall impact of the project would be major with a potential increase in background noise levels of 8dBA to 9dBA in westerly winds. Although professional opinions vary, in my judgement a noise source can be more intrusive when the source of the noise can be viewed, as would be the case for the occupants of this property. A similar consideration would apply for Hafoty Hendre. Hafod Olygfa is already subject to noise from TMFG. With the addition of the project and other consented wind farms, the duration and scale of the increase in noise levels would increase the noise impact to major. For Crud y Gwynt the noise impact would not be so significant as to add to the harm likely to arise from visual impact.
- 4.236 There would be significant change to the visual and aural amenities of a number of residents in the vicinity of the site, and I do not belittle the effect of those changes on the enjoyment by residents of their homes. However, such significant changes are a consequence of the policy decision by the WG in TAN 8 to accommodate large scale wind farm development in Clocaenog Forest, and the impacts on the majority of properties would be outweighed by the strong policy presumption established in NPS EN-1 and EN-3 in favour of the project.
- 4.237 However, for three properties there is a risk that residential amenity would be affected to such a degree that the PPW standard

²⁶⁵ AD_012 Figure 6.11b.A (November 2012)

of "good neighbourliness" would not be achieved and there would be conflict with Policy NTE/7 of the CLDP, and VOE 9 of the DLDP. This level of impact, which could make a property an unattractive place in which to live, has been found to be against the public interest and therefore unacceptable in Inspectors' appeal decisions²⁶⁶, and permission has been refused. I therefore consider that the adverse impact on the residential amenity of the three dwellings is important and relevant matter to be weighed against the benefits of the project under s104(7) of the PA2008.

Shadow Flicker

- 4.238 A full modelling assessment of the potential for shadow flicker at residential properties has been carried out based on the adopted and widely accepted industry methods of analysis. The maximum turbine diameter would be 90m, so an area envelope of 900m from the nearest turbine and 130 degrees either side of north has been used in accord with the policy in EN-3. Receptors beyond 900m from a turbine would not be affected as the intensity of shadows cast diminishes with distance from a turbine. The Councils raise no issue in relation to the assessment²⁶⁷.
- 4.239 There are five houses within 900m of the nearest proposed turbine²⁶⁸. These are the properties in which shadow flicker could potentially occur under particular conditions²⁶⁹. To mitigate any nuisance caused by shadow flicker, shadow flicker timers would be installed on turbines 19 and 23. Light meters and shadow flicker timers would cause the relevant turbines to shut down when shadow flicker is predicted to occur. A scheme to secure these provisions is required for submission and implementation under R23. On this basis I accept that shadow flicker effects would be negligible and the project would accord with Policy NTE/7d) of the DLDP and VOE 9ii) in this respect.

Heritage Impacts

- 4.240 Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010 (IPDR) deals with listed buildings, conservation areas and scheduled monuments. That states at 3(1) that in deciding an application which affects a listed building or its setting, the decision maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. For conservation areas 3(2) states that the decision maker must have regard to the desirability of preserving or enhancing the character or appearance of that area. When deciding an application for development consent which affects or is likely to affect a SAM or

²⁶⁶ AD_048

²⁶⁷ LIR_001 para 13.2

²⁶⁸ AD_029 ES para 13.6.3.2

²⁶⁹ AD_029 Described in ES para 13.5.3

its setting, the decision maker must have regard to the desirability of preserving the SAM or its setting (3(3)).

- 4.241 The applicant's assessment of physical effect was undertaken in accordance with the Institute for Archaeologists standards and guidance for historic environment desk based assessment (revised 2011). To assess the visual impact of the project alone and cumulatively the criteria set out in 'Wind Energy and the Historic Environment'²⁷⁰ were used²⁷¹. In regard to the assessment, there is no dispute that all other wind energy developments and projects relevant for cumulative assessment were identified; that the baseline of cultural heritage assets has been correctly gathered²⁷²; that the assessment of impacts has been performed in accordance with best practice, using accepted criteria for asset value, condition, and magnitude and significance of impact²⁷³; and that the ASIDOHL2²⁷⁴ methodology is the appropriate approach for assessing the impact on historic landscapes²⁷⁵.
- 4.242 CCBC does not agree the relative value attributed by the applicant's assessment to Listed Buildings²⁷⁶. The applicant's assessment attributes Grade I listed buildings national significance, whilst Grade II listed buildings are generally accorded regional significance. Welsh Office Circular 61/96 "Planning and the Historic Environment" states that the emphasis in the criteria applied to assess listed buildings is on national significance. CCBC therefore argues that all listed buildings should be accorded national value.
- 4.243 The approach to asset 'value' adopted in the applicant's ES follows the guidance provided in the 2007 revision of the Design Manual for Roads and Bridges. Furthermore, the applicant argues that the distinction drawn between Grade I and II* assets on the one hand and Grade II assets on the other is also supported by para 5.8.14 of EN-1 which states 'there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be'. EN-1 also states 'any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification that will be needed for any loss' (para 5.8.15).

²⁷⁰ English Heritage 2005

²⁷¹ AD_015 ES Chapter 6 paras 6.5.7.6 and 6.5.7.7

²⁷² AD_015 ES Chapter 6 Section 6.5 and summarised in Tables 6.3 to 6.9

²⁷³ Department of Transport/Welsh Office/Scottish Office Design Manual for Roads and Bridges (DMRB) Vol. 11 Section 3 Part 2, Annexes 5 and 6 (revised August 2007)

²⁷⁴ Assessment of the Significance of Impact of Development on Historic Landscapes v2 (CCW, Cadw and WAG 2007)

²⁷⁵ The assessment of the impact upon the registered historic landscape of Mynydd Hiraethog/Denbigh Moors correctly applies the ASIDOHL2 methodology.

²⁷⁶ LIR_001 p66

- 4.244 However, the duty imposed under IPDR does not distinguish between the Grade of the Listed Building. Regard must be paid to the importance of preserving the building or its setting, irrespective of its Grade. Any harmful impact to a listed building or its setting should be attributed a level of weight which reflects this duty, whether the building is Grade I or Grade II. This is the test which must be applied in considering the impact of the project on the setting of listed buildings, and any harm would be proportional to the significance of the heritage asset which is affected.
- 4.245 Direct physical impact on standing historic structures and buried archaeology arising from the project is likely to be confined within the boundaries of the application site. However, the potential for indirect impact on historic assets could extend more widely than the development footprint, with potential for impacts on the setting of archaeological monuments and historic buildings and on areas such as historic landscapes.
- 4.246 To assess the impact of the CFWF on archaeology and cultural heritage, the applicant has identified two study areas. A 1km study area deals with the cultural heritage in the immediate locality of the project, in particular buried archaeology, whilst a 10km study area identifies the key visual receptors within the wider zone of potential visual impact²⁷⁷. The locations of SAMs, listed buildings and parks and historic landscapes have been identified²⁷⁸.
- 4.247 The applicant agreed the 1km study area with Clwyd Powys Archaeological Trust (CPAT), and the 10km study area was agreed with CPAT, and CCW (now part of NRW). DCC and CCBC agree the spatial scope of the assessment which has been carried out by the applicant in accordance with the Institute for Archaeologists Standards and guidance for historic environment desk based assessment. NRW raise no issue with the methodology and conclusions of the assessment²⁷⁹.
- 4.248 The identification of high value assets including World Heritage Sites, SAM, Listed Buildings, Historic Parks and Gardens and Historic Landscapes has been undertaken on the basis of data supplied by Cadw²⁸⁰. Relevant policies taken into account for the assessment include NPSs, PPW, and TAN 8.

Visual impact on the setting of listed buildings

- 4.249 Turning now to the impact on the setting of Listed Buildings, concerns are raised in the Councils' LIR that the applicant's assessment of the impact on Listed Buildings and Conservation

²⁷⁷ AD_015 ES Chapter 6 para 6.5.3.3

²⁷⁸ AD_014 See Figures 6.1 to 6.7

²⁷⁹ SoCG_002 p2

²⁸⁰ The Welsh Government's historic environment service

Areas should have been carried out in accordance with the approach taken to SAMs²⁸¹. The applicant has not submitted a detailed assessment of impact on each individual listed building or on groups of listed buildings in the area. There is therefore an issue as to whether sufficient evidence has been produced to enable the decision maker to fulfil the statutory duty imposed by the IPDR.

4.250 Within the 10km study area there are a total of 826 Listed Buildings²⁸². There is one on the boundary of the application site, then a further four within 2km of the site. These are all Grade II. At 2km to 5km from the application site a few small settlements are encountered yielding a total of 76 Listed Buildings. Most of these are listed Grade II with six Grade II* and one Grade I:

- LB725 Church of St Mary, Derwen (Grade I)
- LB92 Church of St Michael, Llanfihangel Glyn Myfyr (Grade II*)
- LB95 Bodtegir Old Farmhouse, Llanfihangel Glyn Myfyr (Grade II*)
- LB664 Church of St Mary, Betws Gwerfil Goch (Grade II*)
- LB723 Church of St Foddhyd, Clocaenog (Grade II*)
- LB726 Cross in churchyard of St Mary, Derwen (Grade II*)
- LB733 Church of St Mary, Cyffylliog (Grade II*)

The much larger numbers of Listed Buildings at 5km to 10km largely reflect the presence of Denbigh and Ruthin within the study area.

4.251 Having agreed the study area for the cultural heritage assessment of visual impacts, the applicant carried out field visits during the winter when vegetation was at its thinnest. At the visits, the changes in the views of and from key heritage receptors which would result from the project were assessed. In this way, the applicant considered in detail the historic setting issues for each particular monument or building. However, having carried out this assessment the applicant did not produce written descriptions of all individual assets because it was considered that the predicted effects did not justify such detailed treatment. The absence of such a detailed written assessment does present difficulties to the decision maker since the applicant's conclusions cannot readily be tested.

4.252 The ZTV produced for the LVIA shows that, based on landform alone, the Project could be visible for up to 35km. However, once the intervening vegetation and buildings are taken into account, and having regard to the findings of the LVIA, the locations from which the turbines would be significant and noticeable visual features are fragmented and reduce with distance.

²⁸¹ LIR_001 para 14.4

²⁸² AD_015 ES Chapter 6 Table 6.6

- 4.253 The applicant's assessment in the ES concluded that no Listed Building would be subject to an impact on its setting²⁸³. This conclusion was reached for two reasons. Firstly, most of the Listed Buildings closer to the wind farm where greater visual change might be expected (i.e. those within 5km of the application site) are found in settlements located in valleys screened from the turbines. From my own visits to the site and its surroundings, I agree that for listed properties for which the village provides the setting, even if there was to be some visibility of the turbines beyond the village, that would be unlikely to have any effect on the quality or appreciation of the listed building within the village setting.
- 4.254 Secondly, for those listed buildings within 5km that would have intervisibility with the turbines, most are rural vernacular buildings, typically farmhouses and other agricultural buildings that are currently experienced in a rural agricultural setting. That setting already includes some wind turbines, or will do once all wind farms with consent have been constructed. The applicant argues that the presence of additional wind turbines as part of CFWF, generally at a range of over 2km, would be unlikely to affect the legibility of this setting and the buildings would continue to be part of an agricultural landscape with wind farms. Since the wind farms which have been permitted or constructed would establish the change in the wider landscape around the forest to a landscape with wind turbines, I generally agree with the applicant's assessment. Other asset types represented within 5km and not considered sensitive to the predicted visual change include examples of bridges and telephone call boxes.
- 4.255 I agree that theoretical visibility of the project between 5km and 10km would be relatively localised. To the north, south and east of the application site, there are extensive blocks of forestry and smaller areas of woodland and hedges. These combine with settlements and the undulations in the topography to restrict long distance views towards the application site. In this visually fragmented landscape, most historic buildings and scheduled monuments cannot be seen across distances of more than a few hundred metres, and intervisibility between such sites is restricted. It is within this landscape that the Grade II* listed Derwen Hall and Nantclwyd Hall and its Park are located. Representations were made to the effect that proper consideration has not been given to the impact of the CFWF on the setting of these historic assets²⁸⁴.
- 4.256 I have considered the potential for impact on the setting of each of these Grade II* listed buildings. Derwen Hall is a late 16th century timber-framed farmhouse with later additions. It would be located 6.5km to the east of the closest turbine (27). The bare-ground

²⁸³ AD_015 ES Chapter 6 para 6.7.4.16

²⁸⁴ RQ_2_011 and WSC_017

ZTV predicts visibilities of 1 to 5 blade tips but this is likely to be an over-estimate due to local screening by vegetation. I agree with the applicant that there is no reason to predict that this low level of visual change would affect the significance of the setting of this Listed Building.

- 4.257 Nantclwyd Hall is a large country house of late-17th century origins but substantially enlarged in the 19th century. It is the principal building of a group of related Listed Buildings located within a park, 8.3km to the east of the closest turbine (27). The house and park occupy a valley-floor site beside the Afon Clwyd. The bare-ground ZTV predicts no visibility at the house itself, although visibility of between 1 to 5 blade tips is predicted for much of the parkland. Again this is likely to be an over-estimate due to local screening by vegetation. The grounds immediately surrounding the house and its offices are particularly well-screened by mature woodland to the west, between the house and the A494 and there would be no visual change in this area. As a result, I accept the applicant's assessment that key views out from the house would be unaffected, and there is no reason to predict that the low level of visual change would affect the quality of the setting of this Listed Building and its park.
- 4.258 No evidence was produced to indicate that the conclusions of the applicant's assessment of visual impact on listed buildings in the surrounding area were in error. Whilst I did not visit every listed building identified within the 10km radius of the application site, I developed sufficient familiarity with the site and its surroundings to be satisfied that those conclusions were reasonable. There would be changes in views throughout the study area. Some of those views would be available from within the grounds of listed buildings. However, with distance and intervening topography and vegetation I agree with the applicant that there would not be an impact on the setting of any listed building.

Impact on heritage assets within the application site

- 4.259 In terms of the assessment of direct physical impact, in comparison to the overall size of the forest, the physical footprint of the project is small. Through the design of the scheme, all known archaeological features within the site have been taken into account in order to avoid any physical effect from the development²⁸⁵. Two sites would be fenced off to provide protection during pre-development tree clearance and construction. These are Twr yr Hill round barrow (SAM DE088) and the Maen Cred Standing Stone (PRN 100745/NPRN407541)²⁸⁶. There would be no direct physical effect on the single listed structure, Pont Draws Afon, which lies on the eastern boundary of the site.

²⁸⁵ AD_015 ES Chapter 6 para 6.6.1.1

²⁸⁶ AD_015 ES Chapter 6 section 6.8

- 4.260 The principal impact of construction would relate to the loss of peat containing paleo-environmental data. An appropriate requirement is proposed for the DCO (R24) to secure the submission, approval and implementation of a scheme of archaeological investigation to ensure that the presence of any unknown archaeological remains are properly protected and or recorded. This would also require peat core sampling. The samples would be assessed for palaeo-archaeological and radiocarbon-dating potential. Where the results indicated that a full analysis is merited, the detailed strategy for analysis and reporting would be determined.
- 4.261 In terms of the physical impact of the project on historic assets within the application site, the applicant has undertaken a comprehensive assessment of archaeological remains, and appropriate mitigation measures would be in place through Article 19(1)(c) and R24 of the recommended DCO. As a result it is unlikely there would be any substantial physical impact on historic assets within the application site.

Visual impact on archaeological sites

- 4.262 Once the project is in operation it is the visual impact which would potentially affect the setting of historic assets. Within the application site, visibility is mainly restricted by forest trees, apart from the vistas along roads and tracks and within clearings. The Cefn Banog Ancient Village is located within a clearing, but views of, and outwards from the monument are generally restricted. As a result there would be no visual impact on the setting of this SAM. The same circumstances apply to scheduled sites which are within the forest but outside the application site. Ten of the 24 SAMs within 5km of the site can be excluded from the assessment for this reason.
- 4.263 However, Twr yr Hill round barrow stands in a small clearing on the edge of a forestry coupe, with open views to the east and north east. Turbine 1 would be 150m to the north, which would represent a change in the setting of the SAM. The applicant's assessment finds that the relationship with the original setting of the open moor which prevailed in late pre-history would not be affected, no sightlines with other contemporary monuments would be affected and the original function of the SAM would remain legible to visitors.
- 4.264 However, although the setting of the SAM is largely man made because of the forestry operations around it, the introduction of a mechanical turbine of 145m to blade tip within such proximity would be a visually dominant feature for visitors to the site. As a result it would be likely to distract from an appreciation of the monument in its setting. In addition the noise from the movement of the blades would impact on the environment of the SAM. As a result I consider that visitors' experience of the SAM would be

affected in an adverse manner, such that there would be a harmful impact on the quality of the setting of the SAM rather than the neutral impact assessed by the applicant²⁸⁷.

- 4.265 There are five other SAMs for which there would be significant effects relating to indirect visual impacts on their setting²⁸⁸. Bwlch-du, Hen Ddibych and Platforms NW of Hen Ddibych are within 1.1km of the nearest proposed turbine site; Tyddyn Tudur Enclosure is 3.5km and Mwdwl-eithin Round Cairn is 4.2km from the nearest proposed turbine site. The settings of each of these SAMs would be affected by the visual intrusion of the proposed wind turbines in views from within and around the sites²⁸⁹. In view of the scale of the proposed turbines, no mitigation would be possible to reduce the visual intrusion.
- 4.266 The six SAMs represent a small proportion of the high value heritage assets within the 10km study area, and the historic setting of many SAMs, including Ruthin and Denbigh Castles would remain unaffected. In addition, the impact would cease after the decommissioning of the wind farm. Nevertheless, the setting of a SAM is an important material consideration. The level of harm to the setting from visual intrusion is a matter of subjective judgement. However, where the turbines are likely to distract from an appreciation of the qualities of a site, I consider that the impact is harmful. The impact on the settings of the six SAMs which has been identified is a matter which weighs against the application.

Effect on Mynydd Hiraethog

- 4.267 To the west of the application site, the landscape is more open and there are views towards the application site from the shores of Llyn Brenig and across the Denbigh Moors. An ASIDOHL has been carried out for Mynydd Hiraethog²⁹⁰, which is a landscape of special historic interest and is included in the Register of Landscapes of Special Historic Interest in Wales (Cadw, CCW & ICOMOS UK 2001). That finds that the principal visual impacts would occur within a radius of 4km to 7km of the application site.
- 4.268 Within the Mynydd Hiraethog, the dominant historic imprint on the landscape is that of the extensive heather moorland, a creation of the early 20th century. Large parts of this area were taken in by the Devonport shooting estate between 1908 and 1925. The ruins of the elaborate lodge at Gwylfa Hiraethog (a focal point in this landscape) is a physical remembrance of this period, whilst many smaller structures such as shooting butts also survive. Elsewhere in Wales, much similar managed heather grouse moor has been lost, making Mynydd Hiraethog historically valuable.

²⁸⁷ AD_015 ES Chapter 6 para 6.7.4.6

²⁸⁸ AD_015 ES Chapter 6 Table 6.16

²⁸⁹ AD_015 ES Chapter 6 Table 6.14

²⁹⁰ AD_052

- 4.269 There would be no direct physical impacts from the development of the project on the Mynydd Hiraethog, but the ZTV indicates that views of the CFWF would be possible from large areas of the moor. The applicant's field visits have found the visual envelope of the Project to be considerably more restricted than presented within the ZTV, and from my own visits to the area I agree with this assessment. The topography impedes many eastward-looking views towards the project, such that it would not be seen from large parts of the core of the historic landscape, for example Moel Bingham, Moel Rhiwlog and Creigiau Llwydion. A few long-distance views of the Project would exist from summits in the extreme west of the historic landscape, for example Moel Seisiog. These summits stand at distances of approximately 15km from the development boundary, and I accept the position of the applicant, that the project would not generally be a noticeable, significant element in eastward-looking views.
- 4.270 In reporting on the LVIA of the project, I found that there would be some impact on views from the edge of the SNP which could affect the appreciation of views from the west across to the east. However, that impact does diminish with distance, and as reduced numbers of turbines are seen. The ASIDOHL does not include every character area within the historic landscape. Character areas from which there would be no views of the project, or which lie at such a distance that the project would not be a noticeable feature, have been excluded. The ASIDOHL identifies those locations from which the existing, permitted and proposed wind turbines would have a significant visual impact on historic character²⁹¹. The most significant impacts would fall in the Historic Landscape Character Area (HLCA) of Maen-Ilwyd which abuts the application site and from most parts of which the CFWF would be visible²⁹².
- 4.271 Within this open moor, a number of monuments relating to the prehistoric funerary and ritual landscape can still be seen, along with medieval and post medieval pastoral use and settlement. The landscape as a whole, and most of the elements within it, would be viewed in combination with the proposed wind turbines, adding to the existing impact of the TMFG. The character of wind turbines is not in keeping with the historic characteristics of Maen-Ilwyd and their impact is identified by the applicant as negative and significant.
- 4.272 The visual impacts from the CFWF would not apply to the entire historic landscape, and within the greater part of the Mynydd Hiraethog the project would not be visible at all and in others it would only bring about a minor addition to existing views of wind turbines. Where visual change would occur, it would be out of keeping with the moorland character of the Mynydd Hiraethog, but the level of harm would reflect the distance from the application

²⁹¹ AD_052 Annex 6.3 1.2.2.16 and Table 3

²⁹² AD_052 Annex 6.3 1.2.4.12

site, and the number and extent of the turbines visible. Overall, the presence of the CFWF would not undermine an understanding of the historic function of the landscape as a whole, or of its evolution, and therefore the level of harm carries moderate weight and would not be such an adverse impact as to weigh against the benefit of the project.

Vale of Clwyd Historic Landscape and Clwydian Hills

- 4.273 There is some intervisibility between the Vale of Clwyd Historic Landscape and Clocaenog Forest. The Vale of Clwyd forms one of the most distinctive landscapes of north-east Wales (Figure 6.7²⁹³). Containing the River Clwyd in its broad flat base, it runs for about 30km north from the medieval town of Ruthin to join the coast at Rhyl. The valley floor is low, being nowhere more than about 40m above sea level. On the east, the vale is bounded by the edge of the Clwydian Hills which rise steeply to about 300m above sea level, their summits commanding spectacular prospects of the valley floor below. The western side rises more gently towards the Denbighshire uplands some 7km away. The best surviving and most complete, typical historic part of the vale identified here lies mainly south and east of the medieval town of Denbigh.
- 4.274 The Landscape and Visual Impact Assessment²⁹⁴, together with field visits undertaken by the applicant as part of the cultural heritage assessment, indicate that the proposed development would rarely be seen from the nearest character areas (HLCAs) of the historic landscape – i.e. those occupying the valley floor and the lower slopes of the Clwydian Hills. An exception is Denbigh Castle. Because of its elevated position there would be views of 13 turbines from its western and southern ramparts (see Viewpoint 10²⁹⁵). However their scale and appearance is such that they would not impact upon the monument's historic setting, nor on the overall character (or appreciation of) the HLCA. The Project would also be visible from some parts of Ruthin, but would have similarly little effect on the Ruthin Castle, its setting, and its HLCA.
- 4.275 There are extensive views from the summits of the Clwydian Range towards the forest, including from the various Iron Age hill forts and the Victorian Jubilee memorial tower at Moel Famau. Whilst I have concluded earlier in the report that there is some harm to the visual amenity enjoyed from these views²⁹⁶, the turbines would stand at distances of 16km and greater and as such would not affect the historic setting of these monuments nor the character of the HLCAs in which they are situated. Similarly, the west and south-westward views afforded of the enclosed

²⁹³ AD_014

²⁹⁴ AD_011 and AD_13 See the ZTV and Viewpoints 6, 8, 10, 12, 15 and 16

²⁹⁵ AD_011

²⁹⁶ Para 4.79

lowland from these locations (and the Clwydian Hills generally) would be generally unchanged.

Conclusions

- 4.276 Despite the large scale of the project, the impact on heritage assets is relatively limited. There would be visual impacts on the setting of six SAMs as a result of the visual intrusion of wind turbines in views from within and around the sites²⁹⁷, however, there would be no physical impact on these sites. There would also be some visual impact on the Maen-Ilwyd. However, this is just one part of the extensive area of the Mynydd Hiraethog, and the overall impact on the experience of the historic landscape would be moderate.
- 4.277 Clearly the preservation of the setting of historic assets is desirable, and the impact on the setting of the SAMs in particular falls to be weighed against the benefits of the project.

Traffic and Highway Implications

- 4.278 The environmental impact of the traffic generated by the Project has been assessed with reference to the Guidelines for the Environmental Assessment of Road Traffic (EART), published by the Institute of Environmental Assessment (IEA).
- 4.279 In accordance with this guidance, impacts including traffic impact, severance, driver delay, pedestrian amenity, fear and intimidation and accidents and road safety associated with the Project have been assessed.
- 4.280 Extensive consultation was undertaken with the relevant local and strategic highway authorities and the Police throughout the planning process. A detailed account of the consultation process with regards to traffic and transport is provided in section 12.2 of the ES²⁹⁸, and also in the Consultation Report²⁹⁹ which accompanied the DCO application.
- 4.281 Following consultation it was noted that the likely volumes of traffic generated by the development would be insignificant when compared to the background traffic flows on the trunk road network. Furthermore, following the agreement of appropriate controls to ensure the use of the agreed routeing strategies for both AILs and civil/mechanical construction works traffic, it was agreed with DCC and CBCC during the initial scoping meeting that traffic increases on the wider highway network would be negligible.

²⁹⁷ AD_015 ES Chapter 6 Table 6.16

²⁹⁸ AD_027

²⁹⁹ AD_121

- 4.282 Therefore, the scope of the assessment was limited to the B4501 and unnamed roads within the forest as well as the access route utilised for civil / mechanical construction works traffic and the proposed AIL route.
- 4.283 For the final section of the route from the B4501 to the application site DCC Highways Authority would prefer the use of the existing access track across the Tir Mostyn wind farm since this would minimise the works required on the existing highway. However, this is third party land and the right to use it would be subject to negotiation. The impacts on the highway network comprising the preferred route were assessed within the ES, to represent the worst case scenario³⁰⁰. No major impacts were identified. A number of IPs³⁰¹ raise issues concerning traffic impacts, and DCC state that there would be a negative impact on 6km of a narrow country lane³⁰². However, no evidence has been presented to demonstrate that the applicant's assessment is incorrect.
- 4.284 Agreement has been reached with WG³⁰³ on the methodology for a strategic Traffic Management Plan³⁰⁴ (sTMP) to address details related to the movement of AIL deliveries via the trunk road network to the application site. This is separate from the CTMP³⁰⁵ which would be secured through DCO R8. This would address details related to the management of construction traffic on the B4501 and unnamed roads within the forest. The CTMP would be prepared in agreement with each highway authority and would include details of timings for deliveries, driver training, agreed vehicle routing, staff parking arrangements, minibus pick up points and other matters related to safety on the public highway and within the Application Site. Furthermore, the CTMP would identify general measures to minimise the effect of construction activities including reducing the impact of mud, dirt and general detritus deposits on the public highway and the implementation of temporary signing to provide advance warning at crossing points and access junctions.
- 4.285 Whilst there would inevitably be some disruption to users of the public highways in the vicinity of the application site during the construction of the project, the local highways are not heavily used, and the applicant has indicated that appropriate measures would be taken to minimise any delays³⁰⁶
- 4.286 It has been agreed between the applicant and the Councils that based on securing the mitigation set out in Chapter 12 of the ES,

³⁰⁰ See WR_036 para 12.13 et seq for details of the assessment

³⁰¹ For example Nantglyn Community Council WR_023 and WR_012

³⁰² LIR_001 9.1.3

³⁰³ WR_040

³⁰⁴ AD_027 paras 12.2.3 and 12.7.10

³⁰⁵ AD_027 paras 12.2.3 and 12.7.10

³⁰⁶ AD_027 paras 12.2.3 and 12.7.10

and the detailed approval of the CTMP³⁰⁷, and having regard to the advice set out in EN-1 and EN-3, there are no grounds for the refusing the application based on traffic impacts³⁰⁸. Having regard to the requirements listed in the draft DCO which I deal with in Section 7, I am satisfied that there are no outstanding issues relating to traffic and highways which should weigh against the project.

Socio economic impacts including health

- 4.287 Para 5.12.5 of EN-1 highlights the potential linkages between socio-economic effects and other impacts of proposed energy infrastructure. In addition, it should be noted that para 5.12.7 of EN-1 concludes that 'limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure set out in this NPS)'.

Tourism

- 4.288 Tourism is an important part of the economy in Denbighshire, accounting for over 5,000 full time equivalent jobs and bringing £314m revenue to the County annually³⁰⁹. Because of a shortage of material on the relationship between wind farms and tourism, the Councils are not satisfied that the applicant's assessment of the impact of the project on tourism is adequate. They request that the applicant establishes a long term monitoring plan to assess the longer term impact of wind farm development on tourism³¹⁰.
- 4.289 In Conwy, tourism is considered to have a vital role in the economic sector and the LDP seeks to promote and protect it through its policies. Some IPs were concerned that the project would impact on their own tourist business such as rentals and bed and breakfast³¹¹. In view of the scale of the project, CCBC consider that there is scope to improve the proposal and put forward measures to enhance tourism such as better signage throughout and for the Hiraethog Project, and complementary development and improved links to the new Llyn Brenig centre³¹².
- 4.290 For the applicant's assessment on tourism a review of literature was carried out³¹³ regarding the impact of wind farms on tourism including the Moffat Report published in March 2008 and the Visit Scotland report published in August 2012. The Moffat Report indicates that some value of the immediately surrounding scenery

³⁰⁷ In accordance with Requirement 8 of the recommended DCO

³⁰⁸ SoCG_001 section 14

³⁰⁹ LIR_001 para 11.2

³¹⁰ SoCG_001 para 15.6

³¹¹ For example WR_39; submissions at open floor hearing 28 January 2014 e.g. Mrs Roden; Mrs Tilby

³¹² LIR_001 para 11.3 p59

³¹³ AD_109 section 1.2

is lost as a result of the construction of a wind farm. However, this impact is reduced if a number of wind farms are designed to create the impression of a single larger wind farm, rather than having multiple smaller farms. Nevertheless, the research results published by Visit Scotland in 2012 indicate that while 18% UK respondents and 17% Scotland respondents agreed they would tend to avoid any parts of the countryside with wind farms, a significantly larger proportion claimed that they would not avoid it (55% UK and 56% Scotland respondents).

- 4.291 Similar results were found in other studies including independent research commissioned by the Wales Tourist Board. This study mirrored the results above from the study undertaken in Scotland. 23% of respondents felt that wind farms and turbines had detracted from their experience, whilst 17% of respondents felt that wind farms and turbines had enhanced their experience. Overall, over three quarters of respondents were positive or at least neutral towards wind farm development (78%), whilst 21% were clearly negative. 1% claimed to have no real feeling either way.
- 4.292 The conclusions of the literature review would indicate that there is no evidence to suggest a serious negative impact of wind farms on tourism. A more recent study which reports on a survey into the attitudes of visitors to Cornwall towards wind and solar farms³¹⁴ found that 94% of visitors said that the presence of wind and solar farms would make no difference to their decision to visit Cornwall again in the future and 4% said that their presence would make them more likely to visit. Only 2% of visitors stated that they would be less likely to visit as a result of the presence of wind or solar farms.
- 4.293 Clocaenog Forest contains few dedicated tourism facilities, and is not a major recreational forest. Large areas of the forest would remain outside the wind farm site, including the car parks and forest walks at Pincyn Llys, Boncyn Foel Bach, Bod Petryal and Bryn Beddau.
- 4.294 In view of all these factors, there is no evidence to indicate that the project would have a harmful impact on tourism. As a result a requirement for the CFWF DCO to make provision for a tourist monitoring exercise and the measures put forward by CCBC would not be justified.

Use of Local Resources

- 4.295 The employment benefits which would arise as a result of the project are set out in the applicant's written representations³¹⁵. Temporary jobs would be available during the construction and

³¹⁴ South West Research Company Ltd on behalf of Good Energy November 2013

³¹⁵ WR_036 paras 14.12 to 14.16

decommissioning phases, with a more limited number of longer term jobs available whilst the project is operational. No dispute is raised as to quantitative assessment, but the Councils question the mechanism for ensuring that the jobs are filled through local recruitment, thus securing the maximum benefit for the local economy³¹⁶.

- 4.296 Measures to be taken to encourage the use of local suppliers and to recruit employees locally are set out in the ES³¹⁷. Whilst it cannot be guaranteed that all future employment on the project would benefit local people, these measures would ensure that opportunities are fully publicised.
- 4.297 In addition to employment benefits there would also be residual economic effects from expenditure by employees in the local area, and expenditure to local suppliers.
- 4.298 Community benefit is referred to in TAN 8 as a means to ameliorate the community consequences of the impact of the project in terms of any depreciation in the quality of life. However, it is not a mandatory requirement nor a relevant consideration in the determination of the DCO. I do not therefore deal with this in the report.

Linguistic balance

- 4.299 In the CLDP Policy CTH/5 seeks to protect and sustain the long term well-being of the Welsh language. CCBC has indicated in the LIR³¹⁸ that a Community Linguistic Statement should be undertaken to support the CFWF application. However, the circumstances in which such a statement is required are defined under criterion (b) of the Policy. This includes housing, commercial, industrial or tourist development as well as proposals which are likely to lead to loss of community facilities.
- 4.300 The project does not fall within these categories of development. In any event, it would not contribute to any erosion in the use of the Welsh language due to an influx of non-Welsh speaking people because of the relatively short construction and decommissioning periods, and modest level of employment during the operation of the project.

Health Impacts

- 4.301 The applicant has produced a Health Impact Report³¹⁹ in response to a representation from PHE. It considers the key areas highlighted for consideration by PHE which include air quality, land contamination and electric and magnetic fields. I have reported on

³¹⁶ LIR_001 p54

³¹⁷ AD_031 Chapter 14 para 14.8.2.5

³¹⁸ Para 17.3.11

³¹⁹ OD_001

air quality and contaminated land elsewhere in this section of the report³²⁰. Wind farms do not produce ionising radiation. A report on non-ionising radiation to demonstrate that the project would comply with ICNIRP is produced as Annex 3 to the Health Impact Report.

- 4.302 Other impacts which may be considered to present a potential health risk are noise and shadow flicker. These topics have been dealt with earlier in this section of the report³²¹.
- 4.303 There is no evidence that significant impacts on human health are expected due to the construction, operation and decommissioning of the wind farm.

Other Matters

- 4.304 Among the other concerns raised by IPs in the course of the examination was the impact of the project on the value of dwellings in the locality³²². The experience of the owners of Isgaerwen in seeking to sell their property forms part of these submissions³²³. Reference was made to studies, by the Institute of Future Energy Consumer Needs and Behaviour³²⁴ and by the London School of Economics (LSE) that found that house prices were reduced by 12% as a result of the proximity of a wind farm. Furthermore, many local authorities were said to give Council tax reductions to such properties³²⁵.
- 4.305 In response the applicant referred to a UK Parliamentary Briefing Paper "Wind Farms - Distance from Housing" published in July 2012 which refers to a number of studies into the impact of wind farms on house prices³²⁶. This found that evidence of such an effect was inconclusive. Clearly house prices are influenced by a number of factors, which would include the immediate setting of a property. However, there is a view among researchers that objectors may inadvertently "talk down" property values before a wind farm is built³²⁷. I therefore conclude that the evidence is inconclusive.
- 4.306 Representations were submitted³²⁸ to the effect that in assessing impact on visual amenity, the effect on the market value of a property should be taken into account. Furthermore, where such impact did take place, compensation should be payable under section.10 of the Compulsory Purchase Act 1965, and under Part 1

³²⁰ Paras 4.157 to 4.164

³²¹ Paras 4.113 to 4.156 and 4.235 to 4.236

³²² For example WR_10; WSC_011 and WSC_012

³²³ WR_039

³²⁴ WSC_011

³²⁵ WSC_012 and WR_039

³²⁶ WSC_034 para 1.7

³²⁷ Ibid para 1.11

³²⁸ WSC_029

of the Land Compensation Act 1973, and such compensation should be dealt with as an Article to the DCO.

- 4.307 The applicant's assessment of visual amenity follows recommended good practice³²⁹, and that good practice does not advise that property values should form a part of the judgement of impact. Furthermore, property values are generally a matter of private rather than public interest. As a result I find that the methodology applied by the applicant in the assessment is sound.
- 4.308 With regard to the potential for compensation, the applicant's Statement of Reasons³³⁰ addresses the issue of injurious affection under section.10 of the Compulsory Purchase Act 1965. Article 9(4) of the DCO removes the applicant's statutory immunity in respect of noise nuisance. The right to claim compensation for noise therefore lies under section.10 of the Compulsory Purchase Act 1965. Common law remedies are also available. In respect of nuisance that does not arise from noise, for example dust, s152 of the PA2008 gives right to claim compensation for injurious affection and a right to claim compensation under the Land Compensation Act 1973. As a result no explicit provisions are required within the DCO. Therefore in the event that adverse impact were to occur, there would be nothing in the DCO to prevent a claim for compensation to the extent that the law will permit³³¹.
- 4.309 Reference was made to the Milton Keynes Council judgement relating to the separation distance between wind turbines and dwellings³³². However, the discussion in that judgement concerns the legality of a policy which sought to impose such a requirement. Whilst the judge did not find such a policy to be illegal, he confirms that a local policy to require planning permission to be refused if a wind turbine did not meet a minimum separation distance would not be compatible with the SoS's policy. In any event, such a local policy would not be determinative in the assessment of an NSIP.
- 4.310 In regard to fire risk and turbine failure, throughout the construction period there would be CCTV in place and the ERP would be in place to deal with any accident or other incident such as a fire. Consultation would be carried out with the emergency services in the formulation of the ERP, and no comments have been put forward following consultation to date by North Wales Fire and Rescue Services³³³.
- 4.311 Residential properties would be beyond the fall over distance of any turbine plus 10% (159.9m) which is often used as a safe

³²⁹ AD_013 section 5.1.4

³³⁰ AD_159

³³¹ WSC_022

³³² WSC_034 Appendix 1

³³³ RR_121

separation distance³³⁴. This is less than the distance of any residential property from any wind turbine. As a result the danger of damage to property from turbine failure would be unlikely. TAN 8³³⁵ advises that wind turbines should be set back a minimum distance, equivalent to the height to blade tip, from the edge of any public highway or railway line. This guidance is met by all rights of way and roads in the vicinity of the proposed wind turbines.

- 4.312 The operation of wind turbines can interfere with electromagnetic transmissions. The applicant carried out consultations with a number of relevant bodies identified from their initial consultation with OFCOM³³⁶. No concerns were raised by any operator as a result of consultation, and there is no evidence that the project would cause any interference with electromagnetic transmissions. Nevertheless, the Section 106 Agreement³³⁷ makes provision to deal with any interference with television reception should any such claims be made.
- 4.313 I have considered all the other matters raised by IPs, and find no evidence to suggest that any matter which is not addressed in my report would be of such significance as to weigh against the benefits of the project.

³³⁴ Planning Practice Guidance para 016

³³⁵ Annex C para 2.25

³³⁶ AD_029

³³⁷ OD_010

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

- 5.1 The ExA's consideration of issues related to European protected sites has been conducted and provides sufficient information to enable the SoS to carry out any necessary Appropriate Assessment (AA).

Review of the likely Significant Effects on European Sites

- 5.2 The applicant is required by Regulation 5(2)(g) of the APFP Regulations (as amended) to provide sufficient information to enable the competent authority to make an AA of the implications for the European site if required. The ExA is not the competent authority for the purposes of the Habitats Regulations Assessment (HRA); the SoS as decision maker performs this role.
- 5.3 Therefore the function of this section of the report is (i) to place the SoS in a position where all the information necessary to the carrying out of his duties as competent authority has been complied with and placed within a clear analytical framework; and (ii) to identify and respond to the relevant issues raised throughout the examination.

Background

- 5.4 In response to the requirements of Regulation 5(2)(g) of the APFP Regulations, the applicant provided a Report to Inform HRA³³⁸. The information provided within this report was determined to be sufficient to accept the application for examination.
- 5.5 The Report to Inform HRA identified the following European sites for inclusion in the assessment of likely significant effects (LSE):
- River Dee and Bala Lake Special Area of Conservation (SAC)
 - Berwyn and South Clwyd Mountains SAC
 - Llwyn SAC
 - Migneint-Arenig-Dduallt SAC
 - Migneint-Arenig-Dduallt Special Protection Area (SPA)
 - Berwyn SPA
- 5.6 NRW and the applicant agree that sites beyond 15km from the proposed development are unlikely to be affected unless there is a direct hydrological connection. During the examination information has been provided to demonstrate that there is no such connection³³⁹. It was agreed with NRW, DCC and CBCC that all the European sites which could potentially be affected by the project³⁴⁰ have been correctly identified.

³³⁸ AD_078

³³⁹ RQ_1_008 "Catchment Boundaries and European Designated Sites"

³⁴⁰ WR_029 and RQ_1_007

Grid Connection Options

- 5.7 One area of concern addressed during examination related to in combination effects with the potential southern grid connection route to Legacy in the event it was to be chosen by SP Manweb. The River Dee and Bala Lake/Afon Dyfrdwy a Llyn Tegid SAC is located in the southern section of the Legacy Grid Corridor. At present so little is known about this option that there is a lack of detailed environmental information in relation to the potential impacts of the Legacy grid connection route including information relating to the in-combination effects on the interest features of the River Dee and Bala Lake SAC. In the absence of this information it has not been possible to undertake an assessment of the in-combination effects of the CFWF with the Legacy grid connection on the River Dee and Bala Lake SAC.
- 5.8 In response to my second set of written questions, NRW advised in January 2014 that in the absence of sufficient information, it was not able to conclude whether or not significant in-combination effect impacts on the River Dee and Lake Bala SAC would result from the grid options. Furthermore, in respect of the southern grid option alone, NRW could not conclude that there would be no likely significant effect on the Berwyn and Clwydian Hills SAC, and the Berwyn SPA.
- 5.9 However, SP Manweb submitted an application for a scoping opinion on 14 January 2014 for the northern route grid connection to St Asaph. Connections to the consented wind farms at Brenig, Nant Bach and Derwydd Bach do not form part of the development covered by the scoping report, although it is stated that connections from Nant Bach and Derwydd Bach to the SP Manweb collector hub would run underground through the forest.
- 5.10 In terms of the HRA, the whole of the northern route would fall outside of the catchment of the River Dee and Lake Bala SAC, so there would not be an in-combination hydrological effect. In combination effects with the connections from other consented wind farms to the collector hub cannot be determined at this time as no details of the proposed connections are available. Having regard to the status of these connections, I agree with the applicant that the potential for in combination effects with the CFWF or the northern grid connection route cannot be considered at this stage.
- 5.11 Although it is the proposal for the northern grid connection route which is being progressed by SP Manweb, other grid connection options remain open, which could include the southern route. In view of the lack of detailed proposals for the southern route, and the lack of information on the potential for environmental effects, it is not possible at this stage to reach any conclusion as to the potential for in-combination effects from the CFWF together with the southern route in the event that route was selected. However,

at present the northern route to St Asaph is the preferred option and has been considered in this assessment.

Report on the Implications to European Sites (RIES)

- 5.12 During the examination the ExA and the PINS secretariat prepared and published the RIES. This report compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the examination by both the applicant and interested parties relevant to the HRA. It is issued to ensure that interested parties including the statutory nature conservation body (NRW) is consulted formally on HRA matters. This process may be relied on by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations. Table 1 of the RIES³⁴¹ sets out the matters considered in the applicant's Report to Inform HRA within the screening (Stage 1) and effects on integrity (Stage 2) matrices.

Screening Assessment (Stage 1)

- 5.13 The screening assessment undertaken by the applicant considered the sites identified above and in response to the screening assessment (stage 1) NRW agrees with the applicant's methodology and conclusions in their Report to Inform HRA. At the completion of the HRA screening process the only European site with the potential to be affected by the project would be the River Dee and Llyn Tegid (Bala Lake) SAC, requiring the applicant to assess if impacts to the site's integrity would occur. Further details relating to the outcome of the screening assessment for the other sites considered are provided below.

Berwyn and South Clwyd Mountains SAC

- 5.14 It is agreed that no hydrological links exist between the proposed development and this European site³⁴², there are no mobile qualifying features for this European Site and no other impact pathways from the proposed development have been identified. Therefore no effect is likely to occur as a result of the project alone on this European site.
- 5.15 With regard to in-combination effects the proposed development will require a grid connection which is the subject of a separate consent. A number of routes are being considered some of which would/could interact with the Berwyn and South Clwyd Mountains SAC site. However, at the time of issuing the RIES both the applicant and NRW, confirmed that the routing options for the grid connection had been narrowed to one corridor, to the north of Clocaenog with a proposed substation near St Asaph, and this is

³⁴¹ PD_008

³⁴² AD_078

now the preferred option³⁴³. There is no evidence to suggest that the grid connection route to St Asaph could result in an effect on this European Site.

Llwyn SAC

- 5.16 It is agreed that no hydrological links exist between the proposed development and the European site³⁴⁴, there are no mobile qualifying features for this European Site and no other impact pathways from the proposed development have been identified. Therefore no effect is likely to occur as a result of the project alone on this European site.
- 5.17 In relation to the assessment of in-combination effects, the site itself is not located within either grid connection corridor, and no other developments that could give rise to an in-combination effect on the site together with the proposed development have been identified.

Migneint-Arenig-Dduallt SAC

- 5.18 It is agreed that no hydrological links exist between the proposed development and the European site³⁴⁴, there are no mobile qualifying features for this European Site and no other impact pathways from the proposed development have been identified. Therefore no effect is likely to occur as a result of the project alone on this European site.
- 5.19 In relation to the assessment of in-combination effects, the site is not located within either grid connection corridor and no other developments that could give rise to an in-combination effect on the site together with the proposed development have been identified.

Migneint-Arenig-Dduallt Special Protection Area SPA

- 5.20 The Migneint-Arenig-Dduallt SPA is designated for the following features; breeding hen harrier; breeding merlin and breeding peregrine. The applicant's ornithology assessment established that there were no hen harriers recorded breeding in the study area, there are likely to be one or two pairs of merlin breeding within Clocaenog Forest, and at least one pair of breeding peregrine were recorded within the application site.
- 5.21 The applicant's information confirmed that the application site is located beyond the core range of all qualifying species, and beyond the maximum range of hen harrier and merlin. Although the application site is within the maximum recorded distance travelled by breeding peregrine from both the Migneint-Arenig-

³⁴³ WR_029 Appendix A

³⁴⁴ AD_078

Dduallt SPA and Berwyn SPA, it is well beyond the core range. Peregrine nested within the application site³⁴⁵ and the distribution of the 15 peregrine flight lines recorded during the breeding season³⁴⁶ suggests that all of the flight lines are likely to relate to activity by this pair. Connectivity with either SPA is, therefore, unlikely.

- 5.22 The site is located c.12km from the Application Site. On the basis of the information set out above, whilst individuals of the same species as the qualifying features of the European site have been identified at the application site, a functional link between the Application Site and SPA bird populations is unlikely and any likely significant effect can be excluded.
- 5.23 No hydrological connection between the application site and the Migneint-Arenig-Dduallt SPA or any other impact pathway has been identified (See the applicant's response to Rule 8 questions³⁴⁷). A likely significant effect can be excluded.
- 5.24 In relation to the assessment of in-combination effects the site is not located within either grid connection corridor and no other developments that could give rise to an in-combination effect have been identified.

Berwyn SPA

- 5.25 The Berwyn SPA is designated for the following features; breeding hen harrier; breeding red kite; breeding merlin and breeding peregrine. The applicant's ornithology assessment established that there were no hen harriers recorded breeding in the study area, there were no red kites recorded breeding within the study area, there are likely to be one or two pairs of merlin breeding within Clocaenog Forest, and at least one pair of breeding peregrine were recorded within the application site.
- 5.26 Although the application site is within the maximum recorded distance travelled by breeding peregrine from both the Migneint-Arenig-Dduallt SPA and Berwyn SPA, it is well beyond the core range. The ES identifies that the peregrine nested within the application site³⁴⁸ and the distribution of the 15 peregrine flight lines recorded during the breeding season³⁴⁹ suggests that all of the flight lines are likely to relate to activity by this pair. Connectivity with either SPA is, therefore, unlikely.
- 5.27 Berwyn SPA is located 8.7km from the Application Site. On the basis of the information set out above, whilst individuals of the same species as the qualifying features of the European site have

³⁴⁵ AD_023 para 10.7.3.18

³⁴⁶ AD_022 Figure 10.5

³⁴⁷ RQ_1_008

³⁴⁸ AD_023 para 10.7.3.18

³⁴⁹ AD_022 Figure 10.5

been identified at the application site, a functional link between the application site and SPA bird populations is unlikely. A likely significant effect can be excluded.

- 5.28 No hydrological connection between the application site and the SPA or any other impact pathway has been identified.
- 5.29 In relation to the assessment of in-combination effects, the site is not located within the St Asaph grid connection (preferred route) corridor and no other developments that could give rise to an in-combination effect on the site together with the proposed development have been identified. A likely significant effect can be excluded.
- 5.30 The Applicant and NRW agreed that for the above sites since there are no hydrological links between the proposed development and the European site³⁵⁰, there are no mobile qualifying features for this European Site and no other impact pathways from the proposed development have been identified. Therefore no effect is likely to occur as a result of the project alone on these European sites.

Integrity Assessment (Stage 2)

River Dee and Bala Lake SAC

- 5.31 The applicant's HRA screening assessment identified the potential for a likely significant effect on the features of the River Dee and Bala Lake SAC. The River Dee and Bala Lake SAC is designated for having water courses of plain to montane levels with *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation; Atlantic salmon; floating water-plantain; sea lamprey; brook lamprey, river lamprey; bullhead and otter.
- 5.32 The likely significant effects result from potential impacts alone to the hydrology (water quality), disturbance to protected species (otter) and in-combination effects with other wind farm developments, forestry operations and the Legacy connection proposal.
- 5.33 The impacts from the project alone to designated features dependent upon hydrology concluded that given the distance from the site, the small area of forest to be felled within the catchment (47ha), the limited area affected by construction works in the catchment (6.5ha) and the mitigation measures that would be implemented, the project is not likely to have a significant effect on the site's integrity. The applicant's Report to Inform HRA stated that. The conclusion of no likely significant effect is subject to the securing and implementation of mitigation.

³⁵⁰ AD_078

- 5.34 In relation to the impacts from the project alone on otters, the Applicant's report confirmed that no evidence of otter was recorded on any watercourse within the application site, with the closest confirmed evidence of otter on the Afon Alwen approximately 1.8 km to the south west. However, it is still possible that otter use the application site occasionally but it is considered unlikely, due to distance and limited habitat suitability, that significant otter numbers that form part of the SAC utilise the application site. In addition the majority of the watercourses within the application site have been avoided during the design to mitigate any potential effects. NRW have requested that the pre-commencement surveys are required to ensure that otters have not migrated into the application site area.
- 5.35 Provisions to secure pre-commencement surveys and species protection plans would be secured through R9 1(f). DCC and CCBC sought further provisions to be included in R9 in relation to otter such that all water courses within 100m of any blasting were re-surveyed. The applicant has confirmed that the SPP secured under R9 would address protection for otter during the construction phase should the need arise. I therefore consider that adequate protection for otter has been secured through R9.
- 5.36 The assessment of in-combination effects with other proposed development including other wind farms, forestry operations and connection proposals identified no effect on the integrity of the site subject to mitigation. In particular CCBC and DCC were not aware of any other forestry operations or development other than wind farms that could result in similar effects on the River Dee and Bala Lake SAC.
- 5.37 NRW confirmed³⁵¹ that where there are areas of approved felling with felling plans or licences within the catchment, these would have been subject to scrutiny under the UKFS, and HRA screening would have been completed if appropriate. NRW is satisfied that current forestry thresholds appear to be appropriate and it would be safe to conclude that unless there was a major change in these thresholds that the in combination effect would remain insignificant³⁵².
- 5.38 Subject to the implementation of the mitigation measures identified in the applicant's ES and HRA, together with any further measures put forward by NRW and the Councils which are considered to be necessary, CFWF on its own and in combination with all other consented wind farm developments would not result in a significant effect on any European Protected Site. I deal with the adequacy of the requirements to secure this position in Section 7. The mitigation necessary is set out in the applicant's HRA Report and in NRW's written representation and response to the

³⁵¹ WR_029

³⁵² WR_029

examining authority's Rule 8 questions including a requirement with appropriate wording to ensure that NRW is consulted on the detailed version of the Species Protection Plan (SPP) within the CMS/CEMP and the pre-felling assessment."

5.39 The conclusions of the applicant's HRA were not challenged by any party on the issue of the RIES. R9 deals with the CMS which includes the CEMP and the SPP. This requires that NRW is consulted on the CMS before the CMS and all its plans and appendices are submitted to the relevant planning authority to be approved before any development may commence. I therefore find that the project alone would not be likely to have any significant effect on any European protected site.

5.40 In considering the information provided above I have had regard to the site's conservation objectives as follows:

Avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.

Subject to natural change, to maintain or restore:

- *The extent and distribution of qualifying natural habitats and habitats of qualifying species;*
- *The structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species;*
- *The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;*
- *The populations of qualifying species;*
- *The distribution of qualifying species within the site.*

5.41 I am satisfied that there is sufficient evidence to allow the SoS to conclude that adverse effects on the integrity of any European protected site as a result of the development of the CFWF either alone or in combination with other permitted wind farms can be excluded. If this is agreed, there is may be no requirement pursuant to Regulation 61 of the Habitats Regulations for the SoS as the competent authority, before deciding to give consent, to make an appropriate assessment of the implications for the site in view of its conservation objectives.

5.42 NRW agrees that the project is not likely to have a significant effect on the integrity of the SAC, either alone or in combination with the other wind farm projects, provided there is satisfactory implementation of mitigation proposed to safeguard water quality during both the felling and construction activities.

6 COMPULSORY ACQUISITION

The Request for Compulsory Acquisition (CA) Powers

- 6.1 The Statement of Reasons³⁵³ defines RWE's requirement for CA Powers. The majority of the Order Land required for the project within Clocaenog Forest is owned by the WG and managed by NRW on the WG's behalf. Since the applicant has an option for a lease from FCW for the Order Land which is owned by the WG and required for the Project, the applicant does not need to seek powers of CA over the Order Land owned by the WG. However, some of the Order Land required for the Project is land forming public roads for which the relevant highway authorities are responsible. The applicant is seeking to acquire the right to lay and maintain cables in the public roads. In addition, the applicant has identified certain third party rights over the Order Land which are required to be interfered with during the construction of the Project.
- 6.2 The draft Order would confer the necessary limited powers on the applicant to acquire the interests necessary in the public roads and to interfere with those rights in so far as is required to construct the Project. Accordingly, the application is accompanied by a Book of Reference³⁵⁴ and the Land Plans³⁵⁵.

The Purposes for which Rights over the Land is Required

- 6.3 As part of the Project, certain roads within Clocaenog Forest which are public highways maintainable by the relevant local highway authority (either DCC or CCBC) would be subject to street works authorised by the Order³⁵⁶. As well as the temporary interference with those highways during the construction of the street works required for the Project, the applicant is also seeking the right to lay cables. The applicant is of the view that the inclusion of a power to carry out works in a highway is analogous to conferring rights of compulsory acquisition. Accordingly, the applicant has included the requisite acquisition powers in the Order to permit the acquisition of rights to install cables in the highway.
- 6.4 The applicant does not seek to permanently acquire any land or extinguish any rights. However, the interests identified in Part 2a to the Book of Reference may be subject to temporary suspension or interference. The interests for which a claim for compensation in respect of injurious affection under P may be made include sporting and access rights³⁵⁷, and private rights of way³⁵⁸.

³⁵³ AD_159 as updated OD_006

³⁵⁴ AD_160 as updated OD_006

³⁵⁵ AD_177 to AD_183

³⁵⁶ Draft DCO Article 10 and Schedule 2

³⁵⁷ Parcel 8 on the land plan

³⁵⁸ Parcels 2,3,5,6,7 on the Land Plan

- 6.5 As a result of changes made by the applicant to the draft DCO, compulsory acquisition powers are confined to Article 23 and Article 29 and relate to the acquisition of the rights set out in Schedule 6 to install cables under the highway. This Article also expressly authorises interference with private rights of way and sporting rights to the extent set out in Part 2 of Schedule 6. There are potentially minerals within the application site. Article 22 incorporates the minerals code into the Order to provide for any potential for interference with mineral rights.
- 6.6 Compensation provisions are set out in Article 23(4) and Article 24(3).
- 6.7 Statutory undertakers have been consulted, but there is no indication that any apparatus would be affected by the construction of the project. Nevertheless, Articles 29, 30 and 31 make provision for interference in statutory undertakers' apparatus in the event that any is found within the site during construction.
- 6.8 The DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 in Article 25. The provisions set out in s158 of the Act relating to the statutory authority and protection given to override easements and other rights are dealt with in Article 24 as referred to above.

The Requirements of the Planning Act 2008

- 6.9 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.
- 6.10 Section 122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. There is a very limited requirement for compulsory acquisition in this case, which is confined to Article 23 of the DCO. Compensation provisions are set out in Article 23(4).
- 6.11 The only right of acquisition sought is in respect of the right for the applicant to install cables in the public highway, either as part of the project itself or for the repositioning of statutory undertakers apparatus. The applicant is also seeking the power to interfere with minerals rights, private rights of way and sporting rights to the extent set out in Part 2 of Schedule 6. Compensation provisions are set out in Article 24(3). Having regard to the scale of the project, the rights which are sought are no more than is reasonably required and would be proportionate.³⁵⁹
- 6.12 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived

³⁵⁹ Guidance related to procedures for compulsory acquisition DCLG February 2010

from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. However, no conclusion can be reached until a judgement is made on the case for the development proposed in the DCO.

- 6.13 The condition in s123(2) is met because the application for the DCO includes a request for compulsory acquisition of the land to be authorised.

The Case for Compulsory Acquisition

- 6.14 The laying of cables within the public highway is required in order to provide connection between the turbines and the national grid. No objection has been raised by any party to the laying of the cables, and the process for laying the cables would be set out within the CMS for approval by the Local Planning Authority. The applicant is clear that the compulsory acquisition powers are required solely in respect of highways land. The land across which the public highways are laid is in Crown ownership and in the event that the cables encroach below highway land into Crown land, consent from the WG has been given for the works to take place³⁶⁰. Article 29 also provides for new rights to be compulsorily acquired if it becomes necessary to reposition statutory undertakers' apparatus.
- 6.15 With regard to the interference with minerals and sporting rights, there have been no objections raised, and the applicant confirmed³⁶¹ that their inclusion is precautionary and the individuals affected may be deceased or may have moved away from the area.
- 6.16 With regard to the interference with private rights of way, affected persons are listed in Parts 2a and 3 of the Book of Reference³⁶². A number of concerns have been raised by local residents³⁶³ who might be affected as to whether they would be able to maintain access to their homes and farming activities. Full details of the manner in which private rights of way will be affected will be finalised through the approval of the CMS. The applicant has made contact with all those who may be affected and confirms that no engagement has been received from individuals listed in section 13 of the Statement of Reasons³⁶⁴.
- 6.17 Any interference with private rights of way would be a temporary measure during the construction of the project, which is expected to take about two years. The applicant would be liable to provide compensation to any person who suffers loss by the suspension of

³⁶⁰ AS_020

³⁶¹ WSC_031 para 8.6

³⁶² AD_161 as updated OD_006

³⁶³ For example WR_0012 and WR_030

³⁶⁴ AD_159

their rights³⁶⁵. There would be no interference with private rights of way during the normal operation of the wind turbines.

- 6.18 In the event that compulsory acquisition rights are granted, Article 1 of the First Protocol and Article 8 of the Human Rights Act are engaged. However, the interference with private rights of way is necessary to the construction of the project. Interference would be for a prescribed period and compensation would be available for any loss experienced. This is a very large scale project for which there is significant support in national policy. The limited interference with private rights in order to construct the project would be both proportionate and justified in the public interest.
- 6.19 Those whose rights would be affected have been properly notified by the applicant of the development³⁶⁶, and there has been adequate opportunity during the six months of the examination for those parties to express their views. I held a hearing on compulsory acquisition on 29 January 2014 but no objections were put forward. All those affected have therefore had the opportunity for a fair and public hearing in accordance with Article 6 of the Human Rights Act

Availability and Adequacy of Funds

- 6.20 RWE is a subsidiary of RWE AG which is a major German energy company. The consolidated accounts of RWE at December 2011 stated a total cost of fixed assets net of accumulated depreciation and amortisation of £860 million. As of the same date the non-current assets of RWE AG were €60,465 million or £49,158 million at current exchange rates³⁶⁷.
- 6.21 As of May 2012 RWE NRL owned and operated 24 onshore wind farms in the UK with an installed capacity of 316MW, having managed the development and construction of the majority of these assets, and is currently constructing seven onshore wind farm projects in the UK.
- 6.22 RWE has taken expert advice on the costs of the construction of the proposed development, the acquisition of land and the likely compensation costs arising from the Order, and having taken such advice is satisfied that the development costs fall within an acceptable range and that the development is commercially viable. In view of the financial status of the company and the assets held, and the nature of the land and rights to be acquired, there is no doubt as to the applicant's competence to fund any compensation.

³⁶⁵ Article 24(3)

³⁶⁶ AD_159

³⁶⁷ AD_156

The ExA's Conclusions

- 6.23 In this case the compulsory acquisition powers sought in the DCO are very limited. The application accords with s122 and s123 of the PA2008 and the conditions listed in s122(2)(a) to s122(2)(c) of the PA2008 are met. There is no disproportionate or unjustified interference with human rights such as to conflict with the provisions of the Human Rights Act 1998.
- 6.24 However, the draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view is taken on the case for the development overall. The case for the compulsory acquisition must be dependent on the view that the DCO as a whole should be made.
- 6.25 The benefits of providing for a large scale renewable energy project are set out clearly in NPS EN-1 and NPS EN-3. The project would contribute to the achievement of the UK Renewable Energy Strategy and accords with the objectives of PPW. There would be no private loss of land or rights in relation to the installation of the cables. The case in the public interest for the project is compelling. Having regard to all the particular circumstance in this case for compulsory acquisition, in the event that the SoS decides to give consent and to make the order, there would be a compelling case in the public interest for the limited acquisition of and interference with rights.

7 DRAFT DEVELOPMENT CONSENT ORDER

- 7.1 The draft DCO constitutes the consent sought for the proposed development. It sets out the authority to be given to RWE, including the permanent and temporary compulsory acquisition of land and interests in land; the obligations that the applicant is prepared to accept to facilitate the development; the further approvals that are required before particular works can commence; the protective provisions necessary to safeguard the interest of other parties; and the requirements (corresponding to planning conditions) to be met when implementing the consent.
- 7.2 Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. If the Order includes such provision, S117(4) requires that it must be in the form of a statutory instrument. The DCO is in the form of a statutory instrument.
- 7.3 I scheduled two issue specific hearings on the draft DCO; one in November 2013 to assist me and interested and affected persons to understand how the document was intended to work; and a second in January 2014 to consider the amended version of the DCO, which was subsequently revised in the light of discussions at the hearing³⁶⁸.
- 7.4 Four versions of the draft DCO were submitted by the applicant during the course of the examination. The original draft DCO was submitted with the application³⁶⁹; and an amended version dated 14 November 2013³⁷⁰ was submitted following my first round of questions and the first DCO hearing. Further written questions³⁷¹, including questions concerning the DCO were issued on 15 November 2013, and a second issue specific hearing on the DCO was held on 29 January 2014³⁷². The applicant submitted its final draft DCO on 13 February 2014³⁷³, with a corrected version on 19 February 2014³⁷⁴.
- 7.5 All versions of the DCO were subject to comment and revisions were made to address changes sought by interested parties in their written or oral representations. Comments were also provided in response to my written questions on drafting or seeking justification for the powers sought in the DCO³⁷⁵ or in response to questions raised at the DCO hearings³⁷⁶.

³⁶⁸ FdDCO_002

³⁶⁹ AD_117

³⁷⁰ OD_009

³⁷¹ PD_007

³⁷² HRG_007

³⁷³ FdDCO_001

³⁷⁴ FdDCO_002

³⁷⁵ PD_004 and PD_007

³⁷⁶ HRG_002 and HRG_007

- 7.6 Discussion about the DCO during the course of the examination was an iterative process. The background to the revisions to the DCO can be traced through the first and second round questions on the DCO³⁷⁷ the answers to each round of questions on the DCO as provided by the applicant³⁷⁸; the agendas for the two DCO hearings³⁷⁹; and the applicant's summaries of case for each hearing³⁸⁰.
- 7.7 I published my draft of the DCO on 28 February 2014. Responses to the ExA's draft were received on 6 March 2014³⁸¹ and I have made some further amendments in order to produce my submitted version which is at Appendix D. I recommend that should development consent be granted for the Clocaenog Forest Wind Farm the DCO attached at Appendix D is appropriate.

Description of the development

- 7.8 The development which would be authorised by the DCO is described in Schedule 1 of the Order. The nationally significant infrastructure project³⁸² is identified as Works Nos 1 to 14B. It is described as a wind energy electricity generating station with an installed capacity of between 64 and 96MW. In summary it comprises:
- up to 32 wind turbines
 - a series of electrical and electronic communication cables buried beneath the ground connecting the wind turbines;
 - a series of new tracks, existing tracks which will be improved and widened and public roads which will be widened;
 - widening of an unnamed public road to provide a construction, maintenance and emergency site access;
 - an onsite electricity substation including a control building;
 - two meteorological masts;
 - two temporary civil construction compounds;
 - four borrow pits for the extraction of stone; and
 - a temporary electrical compound.

I have concluded in para 4.13 that all components of the project would be an integral part of the wind energy electricity generating station without which the project would not be able to operate. There is one ancillary work listed in Part 2 to Schedule 1 which provides for landscaping and clearance of vegetation required in connection with Work No 3.

³⁷⁷ PD_004 and PD_007

³⁷⁸ RQ_1_008 and RQ_2_009

³⁷⁹ HRG_002 and HRG_007

³⁸⁰ WSC_001 and WSC_031

³⁸¹ CExADCO_001 to CExADCO_013

³⁸² As defined in s14 and s15 of the PA2008

- 7.9 There is objection from IPs to the reference in the Order to Borrow Pits. These would be between 16 and 19m deep with a surface area between 39,200 and 11,300sm, and IPs considered they should therefore be described as quarries. However, the term is one that is understood in construction and civil engineering to mean an area where material has been dug for use at another location, and can be found close to many construction projects. Borrow Pits can be of any scale. Therefore I do not consider that the use of this term in the DCO is misleading.
- 7.10 The issue of bias was also raised by some IPs, insofar as drafts of a DCO and its requirements were being considered alongside the merits of the case for the project. However, it is the DCO for which the application is made, and it comprises the legal description of the project. The DCO and its requirements are the key elements which are the subject of examination.
- 7.11 In the event that the DCO is made, the following plans and documents would require certification in accord with Article 36:
- The book of reference³⁸³
 - Land Plan Nos 01 to 07 and Key plan³⁸⁴
 - Access Plan Nos 01 to 07 and Key Plan³⁸⁵
 - Work Plans Nos 01 to 07 and Key Plan³⁸⁶
 - Any other plan or documents referred to in the Order, including the Indicative Felling Plan Nos 01 to 07 and Key Plan³⁸⁷

Articles

NB: reference in the text to former numbered Articles mean the Article as numbered in the application draft DCO.

- 7.12 The Articles set out the principal powers to be granted if consent is given. Whilst the Localism Act 2011 has changed the approach to the Model Provisions in SI 2009:2265, the applicants took the approach in the Explanatory Memorandum of testing against the model provisions. I have therefore adopted that approach in this section. During the examination, regard was also had to the wording of Articles that have been included in the recent Order for the Brechfa Forest Wind Farm³⁸⁸.
- 7.13 Article 2 contains provision for the interpretation of words and phrases used in the Order. Since there is no permanent extinguishment of rights proposed in the Order, I have amended the definition of "Order land" under a) from that set out in the

³⁸³ AD 160 as updated by OD_002

³⁸⁴ AD_177 to AD_184

³⁸⁵ AD_193 to AD_200

³⁸⁶ AD_185 to AD_192

³⁸⁷ AD_201 to AD_208

³⁸⁸ Made on 12 March 2013 SI 2013 No 586

original draft DCO to refer to "land required for or affected by the authorised development". I have also amended the definition of "undertaker" to reflect the applicant's change of name from RWE Npower Renewables Limited to RWE Innogy UK Limited.

- 7.14 Other amendments include the definition of "maintain" in Article 2. This now clarifies the extent of the works that can be carried out as maintenance to ensure that such works remain consistent with the development assessed in the ES. I have also moved the definition of the ES from Schedule 1 Part 3(1) to Article 2.
- 7.15 Article 3 adopts the model provision 2, but in addition to the model provision, and subject to Article 6 (Power to Deviate), a new para (2) has been inserted which links the authorised development to the works plan by spelling out that the works numbered in Schedule 1 are to be constructed in the lines and situations shown on the works plans³⁸⁹. In addition, a new para (3) has also been inserted which provides that without prejudice to Article 6 (Power to deviate) Work Nos 2A, 5A and 14A or Work Nos 2B, 5B and 14B may be constructed but that RWE may not construct both Works Nos 2A, 5A and 14A and Works Nos 2B, 5B and 14B. This provision has been included to enable the Company to construct the works described as Work Nos 2, 5 and 14 in alternative locations depending on the final location for the grid connection to the local electricity distribution network.
- 7.16 Similarly, a new para (3)(b) has also been included which provides that either Work 4A or 4B may be constructed (but not more than one) to enable the company to construct the site access from the public road network in alternative locations.
- 7.17 The inclusion of more than one option within the draft Order in order to meet the need for flexibility in certain aspects of the proposed development accords with Government guidance³⁹⁰. In this case, the location of the substation (and in turn, the route of the circuits of electrical and electronic communication cables connecting the wind turbines and the substation together with the temporary electrical compound) is determined by where the connection to the electricity distribution network will be located³⁹¹. It is a matter for the applicant to decide whether to take the risk of seeking consent for the CFWF before the route of the grid connection has been determined. The applicant has met the provisions set out in para 83 of the DCLG Guidance³⁹²
- 7.18 No issues are raised with respect to Articles 4, 5, 6, 7 and 8. Article 4 deals with the procedure for obtaining the approvals required under the requirements in Part 3 of Schedule 1 to the

³⁸⁹ Approach used in Brechfa Forest DCO Art 3(2)

³⁹⁰ DCLG Guidance on the pre-application process under the PA2008 (January 2013) para 83

³⁹¹ AD_118 para 3.3 et seq

³⁹² AD_118 paras 3.8 to 3.9

Order; Article 5 authorises RWE to maintain the project; and Article 6 provides for limits within which the construction and maintenance of the project can deviate. Article 7(1) deals with authorisation to generate electricity in accordance with s140 of the PA2008, and 7(2) preserves the effect of s. 150. Reference to transmitting electricity has been deleted. Article 8(2), (3) and (4) follows model provision 5. It confers the benefit of the Order to the undertaker(8(1)), but makes provision for that benefit to be transferred or temporarily granted to another person, subject to the consent of the SoS.

- 7.19 Article 9 deals with defence to proceedings in respect of statutory nuisance. Para 9(4) has been inserted to exclude the operation of s158 of the PA2008 from operational noise arising from the operation of the CFWF. As a result the applicant would not be protected from statutory proceedings in respect of noise nuisance. This approach follows that taken in the Brechfa Forest DCO which contains an identical provision (Article 9(4)).
- 7.20 There are no changes to Article 10 which provides for the works in Schedule 2 required in connection with the laying of cables forming Work No 2 in Schedule 1 to the Order. Article 11 then provides for stopping up of streets specified in Schedule 3 which comprises FP19. The reference to "extinguishment" in 11(3) was deleted since it is not anticipated that any private right of way would be permanently lost. 11(5) allows for the relevant local highway authority to retain powers under s247 or 257 of the 1990 Act if it so wishes to do.
- 7.21 Article 12 provides for the application of the 1991 (street works) Act and follows model provision 12 in Schedule 2 to the 2009 Order dealing with railways³⁹³. An addition is made under 12(3) to include s. 82 within the provisions of the 1991 Act referred to in 12(2).
- 7.22 Article 13 provides for the permanent stopping up of FP19 between points P1 and P2, and the provision of a new footpath between points P1, P3 and P4, and provides for the extinguishment of public rights of way over the section of the footpath. DCC is seeking an alternative route for the diversion to be agreed between NRW, DCC and RWE, but is satisfied that the provisions to be made in R16(2)(b) provides the Local Planning Authority with the necessary power to approve the details of the permanent re-routing of FP19³⁹⁴. DCC has not objected to the legal mechanism for diverting the PROW being included in the Order, but 13(2) is inserted to protect the Councils position in the event that they wish to maintain control.

³⁹³ AD_118 para 3.21

³⁹⁴ CExADCO_006 p1

- 7.23 It is in respect of temporary highway consents that DCC seeks to retain control. Article 14(4)(a) provides for consultation with the relevant street authority to temporarily stop up streets specified in Schedule 4, and 14(4)(b) provides that the Company requires the consent of the relevant street authority, which may attach reasonable conditions to any such consent. 14(6) inserts a requirement for a time limit of 28 days after which a street authority which fails to respond to an application for consent is deemed to have given its consent. This has precedent in the same context in recent TWA Orders, including article 9 of the Network Rail (Nuneaton North Chord) Order 2010³⁹⁵. The addition of this requirement allows a refusal to be referred to arbitration under article 37. Without it there would be no appeal mechanism against a decision of the street authority. The provision for deemed consent after 28 days avoids unnecessary delays to the authorised project. The Councils raised no objection to this time limit. Article 14(7) has been inserted into the Order to exclude from the scope of the article any consents under the Road Traffic Regulation Act 1984 that otherwise would have to be obtained from the relevant highway authorities.
- 7.24 Article 15 follows model provision 12, with some changes. 15(1)(b) and (c), and 15(2) provide for consent not to be unreasonably withheld and inserts a time limit of 28 days for the same reasons as in Article 14.
- 7.25 There are no changes to Articles 16 and 17 from the application DCO. A model provision dealing with the application of the 1991 Act has been included as model provision 10 in Schedule 2 to the 2009 Order dealing with railways. Article 16 adopts this model provision 10 although para 10(3) has not been included as it is not relevant to the authorised project. Article 17 adopts model provision 13 although para (1)(b) has been varied. The applicant cites³⁹⁶ a precedent in article 13 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011³⁹⁷ by providing for agreements to be entered into with street authorities in relation to the strengthening, improvement, repair and reconstruction of a street, which is considered appropriate and necessary for the construction of the authorised project.
- 7.26 Model provision 14 has been adapted to form Article 18 which again includes a provision 18(8) for consents not to be unreasonably withheld and inserts a time limit of 28 days for the same reasons as in Article 14 and 15. The Article has been updated to refer to NRW and delete reference to the Homes and Communities Agency, and to refer to the Environmental Permitting (England and Wales) Regulations 2010(b).

³⁹⁵ AD_118 para 3.23

³⁹⁶ AD_118 para 3.30

³⁹⁷ SI 2011/1072

- 7.27 Article 19 follows model provision 16 with some amendments which include the 28 day time limit inserted in Articles 14, 15 and 18. No amendments are put forward for Article 19.
- 7.28 Part 3 of the DCO provides for powers of acquisition. It became clear in the course of the examination that the only CA which was required for the project relates to the public highways in which RWE are seeking to lay and maintain cables. During the construction of the project it would also be necessary to temporarily suspend certain private rights over land within the application site. Articles 20, 21, 22, 23 and 24 have been amended to the form now set out in the submitted DCO.
- 7.29 Article 20 follows model provision 18 but does not include paras (2) and (3) of the model since no private rights are to be extinguished. Article 21 simply imposes a time limit of 5 years for the exercise of the powers. Provision is now made for the incorporation of the mineral code into the Order in Article 22, which follows model provision 6.
- 7.30 Article 23 is amended to ensure there is clarity as to what CA provisions would be secured by the Order. Schedule 6 Part 1 column (2) and Part 2 column (2) has also been amended. Article 24 deals with those private rights which may be temporarily suspended during the construction of the project, and provides for compensation to be payable. The private rights to which this Article applies are those identified in column (2) of Part 2 of Schedule 6 to the Order in relation to the lands numbered 2, 3, 4, 5, 6, 7 and 8 on the land plan.
- 7.31 Since there is to be no acquisition of properties, Article 25 of the application DCO is deleted. New Article 25 follows model provision 23 to provide for the application with modifications of the Compulsory Purchase (Vesting Declarations) Act 1981.
- 7.32 Part 4 of the DCO deals with Miscellaneous and general provisions. Article 26 (formerly 27) follows model provision 35, and Article 27 (formerly 28) follows model provision 36. These Articles have not changed.
- 7.33 New Article 28 deals with felling or lopping of trees. Since there are no hedgerows which fall within the Hedgerows Regulations 1997 which are affected by the project, reference to hedgerows have been removed from the Article.
- 7.34 Although there has been no indication from any statutory undertaker that it has apparatus under the streets described in Part 1 of Schedule 6 of the DCO, Article 29 authorises the Company to acquire rights in land if it needs to reposition statutory undertakers' apparatus. Article 30 follows model provision 32 in respect of apparatus and rights of statutory undertakers in stopped-up streets; and Article 31 follows model

provision 32 and provides for compensation to owners or occupiers of property where apparatus is removed in accordance with Article 30.

- 7.35 Since it is not always clear where statutory undertaker's apparatus may be located, these clauses are an appropriate safeguard within the DCO together with the protective provisions.
- 7.36 There are no trees subject to tree preservation orders which would be affected by the project and therefore all reference to former Article 33 is deleted.
- 7.37 Article 32 (formerly 34) follows model provision 17 and no change to the application version is required.
- 7.38 In relation to Crown Land, former Article 35, now 33, is amended to be headed Crown Rights. The wording of the Article has been re-drafted to reflect s135 of the PA2008 with regard to Crown Land. An option agreement has been entered into between the applicant and NRW³⁹⁸. The use of Crown land will be entirely by agreement and the interference with third party rights will also be subject to the agreement of NRW. A letter has been submitted to confirm that the WG has provided consent under s. 135 of the PA2008³⁹⁹.
- 7.39 Article 34 (formerly 36) provides for the service of notices. Section 229 of the PA2008 contains a general provision for the service of notices which are required or authorised to be served, given or supplied under this Act. Section 229(6) provides that s229 is subject to any contrary provision made by or under this Act and Article 36 is put forward on that basis.
- 7.40 Article 35 (formerly 37) introduces Schedule 8 (Protection for electricity, gas, water and sewerage undertakers) which contains specific safeguards for electricity, gas, water and sewerage undertakers. This is a precautionary measure since there have been no issues raised during the examination in respect of s127 or s138 of the PA2008. A number of residents with PWS sought similar protection for those PWS which might be at risk of adverse effects from the project.
- 7.41 The risk to PWS is considered in section 4, and with the implementation of the proposed mitigation measures the level of risk to PWS would be minimal. Furthermore, in the event that there was an adverse effect arising from the construction, operation or decommissioning of the project, the monitoring of supplies, combined with the provisions of the ERP would safeguard any residence or agricultural holding from suffering any significant disruption in their supply of water. In these circumstances the

³⁹⁸ AD_164

³⁹⁹ AS_020

inclusion of further protection either through Article 35 and Schedule 8 or through some form of indemnity within the DCO would not be justified.

- 7.42 Article 36 (formerly 38) follows model provision 41. I list the plans to be certified in para 7.11.
- 7.43 Article 37 (formerly 39) makes provision for differences arising under any provision of the Order to be referred to and settled by a single arbitrator.

Protective provisions

- 7.44 Schedule 8 provides protective provisions for electricity, gas, water and sewerage undertakers. These provide effective mechanisms for RWE and any statutory undertakers which may be concerned to manage the interface between their respective operations. The nature of such protective provisions means that obligations are imposed on both RWE (for example, by restraining the compulsory removal of apparatus) and on the statutory undertakers (who may, for example be required to obtain rights and facilities over third party land for the purpose of diverting apparatus). The inclusion of Schedule 8 in the DCO is a precautionary measure in view of the negative response from any statutory undertaker in the course of the examination.
- 7.45 Throughout the examination there was discussion concerning the protection of the interests of the operators of the TMFG wind farm, MEAG Munich Ergo, and how this might be achieved. The applicant sought to provide for additions to R8 and R9. In my final draft DCO, I included a draft protective provision in the form of Schedule 8 Part 2 to secure the interests of MEAG Munich Ergo. This was not agreed by the applicant and Schedule 8 Part 2 has not been carried forward to the recommended DCO. Provision was finally made through the inclusion of R8(1)(k) in the DCO, and the completion of a side agreement between MEAG Munich Ergo and the applicant⁴⁰⁰.

Other schedules

- 7.46 Part 3 of Schedule 1 sets out the requirements that must be met in relation to the construction and operation of the project in the event that it is authorised. I deal with the detail of the requirements below.
- 7.47 The streets in which street works may be carried out under Article 10 are set out in Schedule 2. These include unclassified public roads and Public Footpaths.

⁴⁰⁰ AS_021

- 7.48 Schedule 3 describes the street to be stopped up (FP19) and the new route.
- 7.49 Schedule 4 describes streets to be temporarily stopped up and the extent of that temporary stopping up⁴⁰¹.
- 7.50 Schedule 5 describes the access to the works which would be from the unclassified road north of Clocaenog Forest and the B5105.
- 7.51 There have been changes to Schedule 6 which is now in two parts. Part 1 identifies the land subject to the acquisition of new rights, which comprises the right to install cables in the public highway. Part 2 describes the land subject to interference with private rights. These include mineral rights, private rights of way, fishing and sporting rights and rights to water cattle, sheep, horses, and other stock at the reservoir.
- 7.52 Schedule 7 provides for the usual compensation enactments for the compulsory purchase of land and interests in land to apply with necessary modifications to the compulsory acquisition under the Order of a new right.
- 7.53 Schedule 8 deals with protective provisions for Statutory Undertakers.

Requirements

- 7.54 The applicant produced a schedule of the mitigation works referred to in the ES with the associated DCO requirement⁴⁰² in October 2013. SoCG with NRW⁴⁰³ and with DCC/CCBC⁴⁰⁴ on the requirements were produced in November 2013. I held an issue specific hearing on mitigation and requirements on 29 January 2014⁴⁰⁵.
- 7.55 In the list of definitions at 1(1), NRW has been inserted as the successor to FCW, EAW and CCW; TMFGL has been introduced as the owner of TMFG since a provision is made in relation to TMFG in R8; a definition of stakeholder group is added for the purpose of R15; and a definition of ecological clerk of works is added for the purpose of R25.
- 7.56 R2 adopts the substance of model requirements 36 and 37. It sets out the process to be followed where a requirement provides for the submissions of details to the Local Planning Authority for approval. It also provides for the implementation of the approved scheme(R2(b)). Where there are amendments to approved details,

⁴⁰¹ The Councils were concerned that the use of the term "stopping up" would imply a permanent action. However, there is no reason why stopping up should not be a temporary action

⁴⁰² OD_004

⁴⁰³ SoCG_004

⁴⁰⁴ SoCG_003

⁴⁰⁵ HRG_006 Agenda

the provisions of R2 apply. Such amendments are restricted to those for which there would be no materially different environmental effects; and R2(c) requires consultation to be undertaken on such amendments with any third party with whom consultation prior to submission of the original details has been required. This would ensure that amendments are not agreed with the Local Planning Authority without their knowledge.

- 7.57 R3 to 6 deal with time limits and site restoration following either decommissioning or the failure of turbines. R4 provides that the development consent granted by the Order shall expire 25 years after the first date of the export of electricity. R5(a) is amended by the addition of 4A and 4B to 5(2)(a).
- 7.58 R7 provides for the authorised project to be carried out in accordance with the approved plans, subject to the power to deviate set out in Article 6. To provide for mitigation required by NRW, R7(2)(a) and R7(3) provide for separation distances from the forest edge and from watercourses. This mitigation is required to avoid any significant effects in relation to the River Dee and Bala Lake SAC, and would also reduce the risk of any pollution watercourses which supply PWS around the application site.
- 7.59 R8 prohibits the commencement of any development until such time as a Construction Traffic Management Plan (CTMP), according with the principles of the ES and including specific proposals prescribed in the requirement, is approved by the relevant planning authority. R8 follows model requirement 22. Consultation with the Department of Transport of the WG and any relevant highway authorities is required before the CTMP is submitted to the relevant planning authority for approval. The applicant sought to include TMFGL as a consultee, but it would be inappropriate to require consultation with a private company. With the wording for R8(k) in the submitted DCO, the Local Planning Authority would be able to secure the measures required by means of the physical examination of the access arrangements and the submitted plan. R8(k) would ensure that access to TMFG wind turbines is maintained during the construction period, and would therefore meet the concerns of MEAG Munich in that respect.
- 7.60 R9 follows model requirement 18, and provides for the CMS to be submitted and approved by the Local Planning Authority before the authorised development is commenced. It is as part of the CMS that a number of other Plans would be put in place, including the CEMP 9(1)(a) and species protection plans 9(1)(f). Prior consultation is required with NRW in the development of these plans, and would contribute to the avoidance of any significant effect on any European site.
- 7.61 These plans would generate survey results and the Councils requested the inclusion of a provision within the requirement which would call for the results of the surveys to be submitted to

the Local Planning Authority, including any post construction surveys so they could be on the public record. However, the Councils have full control over the provisions to be made within the plans, so these are matters which can be negotiated with RWE before approval for the plans is sought and construction work is commenced on the site.

- 7.62 In their response to the issue of my draft DCO on 6 March 2014, NRW and the Councils have requested a further amendment to 9(2)(u). The amendment clause would read:

' the protocols and programme for environmental monitoring during the site clearance (other than forest felling) and construction works, shall be made publicly available, and shall include the results of monitoring, details of the frequency of auditing and reporting by the Ecological Clerk of Works and the action to be taken where environmental monitoring indicates adverse effects'.

This request has been made at a very late stage in the examination, and the views of RWE are not known. In these circumstances I consider it would be unreasonable to impose the additional provisions in the amendment. It would therefore be a matter for the Councils and NRW to seek to negotiate as part of the approval process for the CMS and its constituent plans.

- 7.63 Further clarification is sought by the Councils in respect of R9(2)(h) and (p). These clauses make reference to PWS, but the Councils point out that there should be a distinction between PWS which have a legal definition under the Private Water Supplies (Wales) Regulations 2010 and farm supplies, which are described in general/farming terms as "natural supplies which are for livestock and farming use". NRW support this submission.
- 7.64 The purpose of R9(2)(h) and (p) is to protect the supply of water to households and to agriculture including water for livestock. It is most likely that the clauses as drafted would achieve this broad purpose since water courses and water bodies are included together with PWS. The water for livestock would originate from a water course or water body or a PWS, and therefore the wording as drafted would provide the protection which the Councils seek.
- 7.65 RWE has sought the reinstatement of R9(2)(w) as listed in the applicant's final (corrected) draft DCO⁴⁰⁶. However, I agree with the Councils that the requirement as worded would not meet the tests of Welsh Office Circular 35/95 since the provisions of the requirement are to protect a private interest (TMFGL) and would not be matters which the Councils could be expected to be able to enforce. In any event, it has been confirmed by RWE and MEAG⁴⁰⁷

⁴⁰⁶ FdDCO_002

⁴⁰⁷ AS_022

that a side agreement has now been reached so that the requirement would not longer be needed.

- 7.66 RWE raises queries as to the clarity of the new 9(2)(w) in my draft DCO. In the submitted DCO the wording suggested by RWE is adopted in the interests of making it clear that the purpose of the requirement is to address material effects arising from the development and not from any other sources.
- 7.67 Requirements 10, 11 and 12 deal with highways and are based on model requirement 10. These would secure highway access, temporary or permanent improvements to the public highway, and the reinstatement of the public highway and associated street furniture following completion of construction. All details are for the approval of the relevant Local Planning Authority before construction work may start, and are to be implemented as approved.
- 7.68 Hours of work and for traffic movements into and out of the site are subject to R13 and 14. These follow model requirement 24. IPs were concerned that HGV movements in particular might take place outside the prescribed hours, but the requirements are quite clear that certain deliveries ("critical operations") may take place outside those times only with the prior approval of the relevant Local Planning Authority.
- 7.69 Whilst I accept that HGV deliveries before 0700 could cause disturbance within the prevailing low background noise level enjoyed by residents around the application site, for the delivery of AILs for example, the applicant may be required to travel over night and therefore reach the site before 0700. In view of the relatively limited numbers of such deliveries, there would not be a significant number of occasions over the period of construction when such disturbance would be experienced.
- 7.70 R15 is based upon model requirement 17. This requires, prior to the commencement of the development that consultation with NRW take place on a detailed HMP which would then be submitted to the relevant Local Planning Authority for approval.
- 7.71 The Councils and NRW are concerned that in R15(2)(f) provision should be expressly set out for bat monitoring to trigger mitigation for bats. The Councils are also concerned that there is no provision for them to be consulted on any changes to the management prescriptions in the HMP which are referred to in R15(2)(f). However, at the hearing on Mitigation and Requirements, the applicant confirmed that the detailed HMP would include provision for mitigation for bats if the proposed monitoring identified potentially significant effects on bats, and NRW confirmed in their summary of case⁴⁰⁸ that they were satisfied with this position. This

⁴⁰⁸ WSC_036

would also meet concerns raised by NWWT⁴⁰⁹. I therefore consider that appropriate mitigation measures would be secured as part of the management prescriptions referred to in R15(2)(f).

- 7.72 Furthermore, by reason of R2, any amendment to the management prescriptions set out in the HMP once approved, is required to be approved by the Local Planning Authority. A requirement in R15(2)(f) that the Local Planning Authority approve any changes to the provisions of the HMP would duplicate the provision made in R2.
- 7.73 RWE queried the wording of R15(2)(g) in my draft of the DCO and suggest amended wording. I note that RWE states⁴¹⁰ that details of the pre-construction study to inform mitigation measures for nightjar would be agreed with the LPA following consultation with NRW. In their summary of case following the Mitigation and Requirements hearing NRW states its agreement with the applicant⁴¹¹. The steps which NRW wishes to see set out for the study are outlined in the NRW case⁴¹². On the basis that the steps sought by NRW could be incorporated into the HMP, I accept the amendment proposed by RWE to R15(2)(g).
- 7.74 In respect of R15(2)(h) in my draft DCO, RWE believes the reference to "other parties" is imprecise and that all wording after Stakeholder Group should be deleted. This wording was put forward by the Councils in their summary of case⁴¹³ to secure some clarity as to the role of the stakeholder group. However, I agree with RWE that the reference to "all parties" is not precise. The HMP is required to establish the membership, terms of reference and provisions of the stakeholder group. It would be open to the Councils to negotiate the role of the group through the terms of reference. On this basis the requirement is amended in the submitted DCO in accordance with the submission of RWE.
- 7.75 NRW seeks the addition to R15 (R15(4)) to require the results of habitat and species management monitoring data and survey results to be made publically available on an annual basis⁴¹⁴. This addition was not raised for discussion prior to or at the Mitigation and Requirements hearing, and because of the late stage in the examination at which this request was made, RWE has not had the opportunity to comment. It is not clear what mechanism is expected to be put in place to enable a public record of the data and results to be maintained. Nevertheless, the monitoring data and survey results would be available to NRW and the Councils, so either body could make them publically available if they so choose,

⁴⁰⁹ WR_037

⁴¹⁰ WSC_022

⁴¹¹ WSC_036 p10

⁴¹² Ibid

⁴¹³ WSC_037

⁴¹⁴ CExADCO_008 p3

whereas the amendment to R15 would not be sufficiently precise to meet the tests in Welsh Office Circular 35/95.

- 7.76 R16 is based on model requirements 11 and 12, and provides that no authorised development shall take place until an AMP is approved by the Local Planning Authority. Consultation with NRW is required before the AMP is submitted. Through R16(2)(b) the Local Planning Authority would have the power to negotiate any changes in the provisions for FP19 as part of the AMP.
- 7.77 R17 requires all tree felling to be undertaken in accordance with NRW (formerly Forestry Commission Wales) best practice. I have dealt with the concerns raised by the Councils and IPs in relation to the control provided by R17 in my Section 4 para 4.105. Felling for the wind farm in Clocaenog is no different from the normal harvesting operations carried out by NRW, consequently the normal controls applied through the coupe planning and recording system already in place are sufficient. R17 refers to the relevant guidance to which all felling activities are required to adhere. Any further control through the DCO would be a duplication.
- 7.78 The future appearance of the project is covered by R18, R19, R20, R21 and R22 which replace model provisions 4 to 6. No issues are raised as to the content of these requirements which would provide the necessary control over the future design, external appearance, colour and finish of the wind turbines, the substation and any associated hard standing area and the electrical compound.
- 7.79 R23 makes provision for a scheme for the avoidance of any shadow flicker to be submitted and approved to the Local Planning Authority before any development is commenced. It also requires a time limit for the investigation of complaints and for the implementation of mitigation measures to be included within the scheme. As a result it would provide protection to occupiers of properties from the effects of shadow flicker.
- 7.80 R24 follows model provision 16 and provides for a written scheme for the investigation of archaeological interest to be approved and implemented. Expanding on the model wording, it identifies areas to be included in the scheme of investigation. This is required in order to ensure there is no harmful effect on any archaeological assets within the area of the application site which would be disturbed during construction.
- 7.81 The wording of R25 was agreed between NRW and RWE at the Mitigation and Requirements hearing⁴¹⁵, but NRW, supported by the Councils sought a further amendment in response to my draft DCO⁴¹⁶. The purpose of the change would be to ensure the

⁴¹⁵ WSC_022 para 7.1

⁴¹⁶ CExADCO_008

Ecological Clerk of Works is retained throughout the duration of the onsite clearance works as well as the construction phase, but not during pre-construction tree felling. The applicant has not had an opportunity to respond to the change in view of its late submission in the examination.

- 7.82 Since the suggested change explicitly excludes forest felling, it is not entirely clear what is meant by "site clearance" in the suggested amendment. R25 does refer to the duration of civil construction works, which would include any engineering works undertaken during site clearance. In my view therefore the requirement is sufficient to ensure that the Ecological Clerk of Works would be retained for all significant works on the site, whether those were connected with site clearance or construction of the project.
- 7.83 Surface water drainage is covered by R26, which follows model provision 14. RWE commented on the version of this condition put forward in my draft DCO⁴¹⁷, but it is unclear what is sought and therefore I do not propose any further change.
- 7.84 The submission and approval of a scheme for the management of accumulations and deposits prior to the start of any development is required by R27, which follows model provision 32. Consultation with NRW is required before the scheme is submitted to the Local Planning Authority for approval.
- 7.85 R28 follows model provision 32 in relation to the provision of infra-red lighting on the wind turbines. Consultation with the Ministry of Defence is required before details of the lighting are submitted to the Local Planning Authority. The use of infra red lighting would mean that lights would not be visible to the human eye and the darkness of the forest would not be affected.
- 7.86 Information on the location of the turbines is required to be submitted to the Defence Geographic Centre of the Ministry of Defence by R28.
- 7.87 The control of noise imissions is provided for in R30 to 34. These replace model provision 25, and provide for a mandatory procedure applicable to the wind farm operator following noise complaints by the public concerning noise from the turbines.
- 7.88 R32 requires a wind turbine to be switched off if directed by the planning authority in order to assess compliance with the noise limits. R34 requires the continuous logging of wind speed, wind direction and power generation data and provision of that data on request by the relevant planning authority.

⁴¹⁷ PD_15 and CExADCO_004 p9

- 7.89 Although the Councils did not agree the limits set in Table 1 to R30, this was because they sought a fixed lower cumulative limit of 38dB for the project. I have considered the argument for a lower fixed limit in Section 4 of my report, and concluded that a fixed lower cumulative limit of 40 dB would be appropriate. The Councils agreed at the Environment hearing that the noise requirements as drafted in the 14 November⁴¹⁸ version of the applicant's DCO would be sufficient to secure compliance if a fixed lower cumulative limit of 40dB was chosen.
- 7.90 Part 4 of Schedule 1 provides guidance for the implementation of R30 to R34 and specifies the methods to be deployed in the assessment of complaints about noise emissions from the wind farm.
- 7.91 The wording in the requirements and in the guidance is based on the advice contained in the ETSU-R-97 document together with precisions, clarifications and requirements specific to this proposed development in accordance with NPS EN-3. The wording has also been informed by the TNEI report for BERR (Onshore Wind energy Planning Conditions Guidance Note: a Report for the Renewables Advisory Board and BERR) and a 2009 article in the Institute of Acoustics Bulletin which provides technical guidance particularly in respect of wind shear.
- 7.92 The proposed wording offers precise clarification on the procedure to be adopted whilst remaining consistent with ETSU-R-97 minimising the risk of delay during any investigative procedure. The numerical values in the tables within the guidance notes are project-specific and a product of consultations with the relevant planning authority.
- 7.93 The Councils and IPs continue to object to the noise levels which would be allowed through the adoption of these requirements⁴¹⁹, and I have acknowledged that there would be significant changes in residential amenity for a number of properties which would be perceived by many as harmful. Nevertheless, in view of the compliance of the requirements with ETSU-R-90, and the policy position set out in NPS EN-3, I accept that the requirements as drafted in the 14 November version of the applicant's draft DCO are appropriate.
- 7.94 In considering the issue of noise in Section 4 of my report, I dealt with the potential occurrence of amplitude modulation in the form that is now recognised as potentially harmful to residential amenity. The applicant's position is that it should be left to be dealt with through statutory nuisance procedures in the event that any complaints are forthcoming. However, the impact of noise on residential amenity is a planning consideration, and it would not

⁴¹⁸ OD_009

⁴¹⁹ For example CExADCO_001; CExADCO_006 and CExADCO_007

be appropriate to rely on the legal process of statutory nuisance to resolve harmful impact on residential amenity if there was a suitable requirement which could be imposed. However, any such requirement would need to meet the tests of Circular 35/95.

7.95 Apart from the condition appended to the recent ReUK study, there are two other potential requirements which were put forward in the course of the examination. The reasons why I am not putting forward the wording of the condition set out in the research published in December 2013 by Renewable UK on Amplitude Modulation⁴²⁰ as a requirement are set out in Section 4 of the report⁴²¹.

7.96 There was support among IPs for the use of the condition imposed in the Den Brook wind farm appeal in December 2009 to deal with any potential problems from amplitude modulation⁴²². This condition was the subject of an appeal to the Courts for clarification of its enforceability, but not for its technical validity. It is recommended for use by the Renewable Energy Foundation but the condition has not been endorsed by the IoA or recognised as best practice in any Government Guidance for the purposes of para 2.7.56 of EN-3. In these circumstances the wording of the Den Brook condition does not have the necessary validation for me to recommend its use as a requirement in the CFWF DCO.

7.97 The other condition on which I sought the views of parties is that imposed in a recent decision by the SoS for Communities and Local Government (ref APP/X1545/A/12/2174982; 2179484; 2179225). The condition chosen by the SoS is:

"No generation of electricity to the grid from the wind turbines shall take place until a Scheme for the regulation of amplitude modulation has been submitted to and approved in writing by the local planning authority. The scheme should be implemented as approved."

7.98 I included this condition as R35 in my draft DCO. In response, the Councils considered that it would be appropriate for an amplitude modulation requirement to be applied in the DCO in the interests of protecting residential amenity. The Councils stated:

"The wording of the condition would give the applicant flexibility to devise a scheme for the regulation of amplitude modulation, having regard to emerging advice and recommendations from the Institute of Acoustics and the Government. Given the work that is currently being carried out in this field, it is reasonable to assume that a properly endorsed AM noise assessment and rating methodology will have been devised prior to the operation of the

⁴²⁰ CRD_017

⁴²¹ Para 4.148

⁴²² CFdDCO_004

development, so the condition would be both reasonable and enforceable."⁴²³

- 7.99 In response, RWE pointed out that there is an acceptance in this statement that without further work being undertaken in the field of amplitude modulation, the applicant would not know how to discharge the condition. For these reasons I accept that there could be considerable delay to the generation of electricity to the grid if it was not possible for RWE to agree with the Councils a scheme for the regulation of amplitude modulation. Such a delay would be unreasonable, and would delay the generation of much needed renewable energy.
- 7.100 However, there is a growing consensus among acoustic experts that there is a need for some form of mitigation to deal with the potential effects of harmful amplitude modulation. Whilst the industry has not yet agreed a position as to the form of condition/requirement which should be imposed, the ReUK research is on going. Whilst I am not able to include an appropriate condition to deal with amplitude modulation at this stage, it would be open to the SoS to review the position if he decides to make the CFWF DCO.
- 7.101 R36 provides a restriction on the extent of the authorised development to ensure that either Work Nos 4A or 4B; or work Nos 5A and 14A or Work Nos 5B and 14B may only be constructed. The final outcome would depend on the route chosen and consented for the grid connection. These alternative provisions are reasonable in view of the lack of certainty as to the future route of the grid connection.
- 7.102 Where appropriate, the requirements identify the relevant body with whom consultation must be undertaken prior to the submission of the details, plan or scheme required to discharge the requirement. In each case it is the applicant who would have responsibility for the discharge of the requirement, but the relevant Local Planning Authority has the right of final approval. In all cases, the full approval is required before any construction work can be started.
- 7.103 The DCO incorporates requirements which are necessary as mitigation measures to ensure that the project alone and in combination with other wind farm development would not have any significant effect under the Habitats Regulations on any European designated site.
- 7.104 In assessing each of the requirements to the DCO, I have considered whether the requirement meets the tests set out in Circular 35/95. I am satisfied that each requirement does meet

⁴²³ RR17_3_005

the tests and would be necessary to the grant of consent to the project.

Other legal agreements

- 7.105 An agreement has been signed by RWE Innogy Limited, The Welsh Ministers, DCC and CCBC under section 106 of the Town and Country Planning Act 1990. Schedule 1 to that agreement would secure the measures to be identified and approved in the Habitats Management Plan and in the Access Management Plan in respect of land outside the boundary of the application site; and Schedule 2 deals with measures to protect television reception within the vicinity of the application site.
- 7.106 The extension of the provisions of the HMP beyond the boundary of the application site is necessary to secure the effective mitigation of ecological impacts. The extension of the provisions of the AMP beyond the boundary of the application site is necessary to secure the access provisions to be made to compensate for the impact of the presence of the wind turbines on PROW within the site. The Schedule 2 provisions would provide protection to television reception within the vicinity of the site. The s. 106 obligations are therefore necessary to make the development acceptable in planning terms; directly related to the proposed development and fairly and reasonably related in scale and kind to the development.

Conclusion on the DCO

- 7.107 I conclude that in the event that development consent is granted by the SoS, the Order should be made in the form set out in Appendix D.

8 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- 8.1 The project which is the subject of the submitted DCO is a Nationally Significant Infrastructure Project (NSIP) as defined in s14(1)(a) and s15(2) of the PA2008 [see para 1.2 of this report]. All the works listed in Schedule 1 to the submitted DCO which define the authorised project would be an integral part of the NSIP [para 4.13].
- 8.2 National Policy Statements EN-1 and EN-3 apply. Section 104(3) of the PA2008 requires the SoS to determine the application in accordance with the relevant NPSs except where that would result in any breach of international obligations, statutory duty or legislation, or where the adverse impacts of the development would outweigh the benefits.
- 8.3 The CFWF would make a significant contribution to meeting the urgent need to cut greenhouse gas emissions and reach the UK target of 15% of energy from renewable resources by 2020. Where a development is in accordance with the NPS EN-1 and EN-3, the decision maker should start with a presumption in favour of that development [paras 3.6 and 3.27].
- 8.4 EN-3 is the relevant technology specific NPS for the determination of the application. The applicant has followed the approach to site selection for an on shore wind farm set out in EN-3. All the technical considerations required for the decision to be made have been addressed within the application [paras 3.25 to 26].
- 8.5 The impacts which EN-3 requires to be addressed in the application and taken into account by the decision maker are covered in detail within the applicant's ES. The ES together with the additional environmental information submitted during the examination is adequate for the assessment of all the environmental issues raised by the project [paras 3.18 to 21].
- 8.6 In addition to the NPSs, the provisions of s104(4)(d) of the PA2008 allow for the SoS to consider other matters which he deems to be important and relevant as part of the decision making process.
- 8.7 The policies of the WG are important and relevant. The project would comply with the objectives of PPW. Clocaenog Forest lies within SSA(A) which is identified in TAN 8 as an appropriate location for the accommodation of large scale wind farms. The project would make a significant contribution to meeting the target for the generation of wind energy of 212MW within SSA(A), and the WG's target of 2GW by 2015/17 [paras 3.28 to 3.31, 3.35 and 4.23].
- 8.8 The policies of the relevant Development Plans are important and relevant. In the DLDP and the CLDP the policies promote renewable energy projects to meet national targets and identify

Clocaenog Forest as the most appropriate location for large scale (over 25MW) wind farm projects [para 3.50].

- 8.9 For all the above reasons, I conclude that the CFWF would contribute to meeting UK strategic objectives for the development of renewable energy, in accordance with policy at national, regional and local level. Large scale impacts are to be expected and accepted in view of the policy presumption in favour of the provision of renewable energy infrastructure which reduce harmful carbon gas emissions in accordance with EN-1 [para 4.25].
- 8.10 It would be necessary to identify significant adverse impacts in order to outweigh the presumption in favour of the scheme in EN-1. I now turn to consider the scale of the impacts that would be likely to result from the project.

Landscape and visual impact

- 8.11 I find that the forest itself could accommodate the wind farm without serious harm to its landscape character. The wider impacts within about 5kms of the CFWF on its own and together with other operational and permitted wind farms, would be significant. However, the impacts would be within an acceptable level for a project of this scale, having regard to EN-3 and TAN 8 which accept significant landscape effects as a consequence of the development of large scale wind farms [paras 4.48 to 4.55].
- 8.12 Impact on landscape character would decline with distance from the site, such that cumulative impacts beyond about 5kms from the application site, and on the landscape character of the Clwydian Range and Dee Valley AONB or the SNP, would not be sufficient to weigh against a project of this scale and importance [paras 4.58 to 4.60].
- 8.13 The visual impact of the project within a radius of 5km, on its own and together with other operational and permitted wind farms, would be significant. This level of impact is implicitly accepted in national policy and in the identification of the forest as a site suitable for large scale wind farm development in TAN 8 and the LDPs. In itself it is not therefore a reason to withhold consent for the CFWF [para 4.66].
- 8.14 Whilst visual impact would decline with distance, the presence of the wind farms would be experienced by people living within and travelling throughout the area which lies between about 5km and 10km from the site. However, this level of visibility and impact is an inevitable consequence of the scale of development required to meet the targets adopted by WG in TAN 8. It does not outweigh the presumption in favour of the project [para 4.67].
- 8.15 There is a duty to have regard to the purposes of nationally designated areas when considering applications outside the boundaries of nationally designated landscapes. The visual impact

of the Clocaenog Forest wind farms would extend to views from within the Clwydian Range and Dee Valley AONB. The increased presence of wind turbines in SSA(A) would change the current experience of looking across tranquil, largely unspoilt countryside to the west from key parts of the AONB. The harmful change in the views westward from the AONB is a matter which weighs against the project [paras 4.69 to 4.75].

- 8.16 For the same reasons there would be a negative impact on visual amenity as users of the SNP look out towards the east, from a limited number of locations closer to the edge of the SNP [4.76 to 4.79].
- 8.17 The design of the layout provides little mitigation for the proposal as sought in EN-3, in terms of visual impact [para 4.91].
- 8.18 Mitigation in the form of reduction in scale or extent of the turbines would reduce the potential for electricity generation and viability of the project, and undermine its purpose [paras 4.80 to 83].
- 8.19 However, the damage to views from the AONB and SNP would not be permanent. In view of the urgent need for the development, the weighty presumption in favour of the scheme in policy at all levels, and the strategic assessment of potential locations carried out in the development of TAN 8, I conclude that the negative effects on the visual amenity of the protected landscapes in themselves do not justify the withholding of development consent.

Ecology and biodiversity

- 8.20 In terms of impact on ecology, biodiversity and protected species, with the mitigation measures which would be secured through the requirements in the DCO, adequate provision would be made to mitigate and potentially enhance ecology and biodiversity within the application site. As a result there is no reason to refuse the Order on ecological grounds [4.93 to 4.112].

Noise

- 8.21 In view of the location of the project within an SSA which has been selected as a location for wind farm development to meet WG targets, and having regard to the national need for renewable energy development set out in NPS EN-1 and EN-3, I find that there are significant benefits in allowing the ETSU-R-97 limit of 40 dB(A) to be applied for CFWF [4.123 to 4.138].
- 8.22 Whilst local residents would experience an unwelcome change in their noise environment during the operation of the project, the noise levels experienced at residential properties would fall within limits which are recommended in ETSU-R-97. EN-3 does state that where the correct methodology has been followed and a wind farm is shown to comply with ETSU-R-97 recommended noise limits,

the decision maker may conclude that it will give little or no weight to adverse noise impacts from the operation of the wind farm. For these reasons the noise impact of the development is not a reason to withhold development consent [para 4.140].

- 8.23 Submissions made to the examination concerning the impact of low frequency noise or infrasound included no evidence to indicate that there would be such a problem as a result of the operation of the project. In these circumstances the advice in EN-3 should prevail such that this matter does not weigh against the application [paras 4.141 to 4.143].
- 8.24 The ReUK report represents progress which has been made in the understanding of amplitude modulation. Whilst I am not able to recommend an appropriate requirement to deal with amplitude modulation at this stage, it would be open to the SoS to review the position if he decides to make the CFWF DCO [paras 4.143 to 4.149 and 7.94 to 7.100].
- 8.25 There would be adequate control over construction noise as a result of the requirements in the DCO [paras 4.155 to 4.156].

Air Quality

- 8.26 There would be no significant issues with regard to air quality which would be controlled through R9 in the DCO [paras 4.157 to 160].

Contaminated land

- 8.27 There would be no significant issues with regard to contaminated land which would be controlled through R9 in the DCO [paras 4.161 to 4.164].

Public Access and Recreation

- 8.28 There would be change to the quality of the experience of the forest for visitors but little physical effect on access for walkers and cyclists. Horse riders may be constrained if riding horses which are likely to be sensitive to the sight or sound of wind turbines, but there would be alternative routes and other parts of the forest which would be further from the turbines and available for horse riders to use. The impact on public access and recreation would not be so significant as to weigh against the project [paras 4.165 to 4.173].

Hydrology and Geology

- 8.29 With the mitigation measures proposed by the applicant which would be secured through R5, R7, R9 and R15 in the DCO, there would be no significant potential off-site impacts on flood flows, on private water supply sources, or on downstream dependent environmentally designated sites and fisheries. Adequate

measures in the form of a communications strategy and proposed mitigation would be put in place to protect affected residents and business users in the event of an interruption to private water supplies as a result of the project [paras 4.174 to 4.199].

Residential Amenity

- 8.30 For residents in the vicinity of the application site who have sought to live in a remote and rural location, the changes to the noise environment and to their visual amenity would have negative effects on their living conditions. However, the overall impact in terms of noise would be within levels accepted in ETSU_R_97 as reasonable for a wind farm of this scale. Having regard to the advice in EN-3, such impact should therefore carry little weight in the determination of this application [paras 4.200 to 4.203].
- 8.31 In terms of visual amenity, there would be significant changes for many households who live around the site. However, there is no right to the protection of a private view in planning policy. The changes would generally be at a level which would be proportionate to the scale and importance of the development being proposed.
- 8.32 However, I identify three dwellings which would be at risk of a particularly harmful level of visual impact. When combined with the changes to the noise environment, there is a risk that those dwellings would become unattractive places in which to live. This level of harm to residential amenity would not be in the public interest, and must weigh against the project [paras 4.204 to 4.239].

Heritage assets

- 8.33 Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010 (IPDR) identifies the responsibilities of the decision maker when dealing with any potential for impacts on listed buildings, conservation areas and SAMs.
- 8.34 A comprehensive assessment of potential impacts on historic assets in and around the site has been carried out, having regard to the advice in Regulation 3 of the IPDR. There would be no physical impact on any historic asset; no undesirable impact on any features of special architectural or historic interest; and the settings of listed buildings would be preserved. Requirement 24 of the DCO would provide adequate mitigation measures to secure any archaeological resources which are located within the application site.
- 8.35 There would be some negative effect on the setting of six SAMs, and the historic landscape of the Maen-Ilwyd would be subject to significant and negative impacts. However, having regard to the large number of SAMs in the vicinity of the site, and the wider scale of the Mynydd Hiraethog within which the Maen-Ilwyd is

located, these impacts would be proportionate to scale and importance of the project and overall the impacts are outweighed by the benefits of the CFWF [paras 4.240 to 4.277].

Traffic and highways

- 8.36 Having regard to the requirements listed in the draft DCO which I deal with in Section 7, I am satisfied that there are no outstanding issues relating to traffic and highways which should weigh against the project [para 4.278–4.286].

Socio economic impacts including health

- 8.37 There is no evidence to indicate that the project would have a harmful impact on tourism. Measures would be put in place to encourage the use of local suppliers and to recruit employees for the construction phase locally; and there would be no significant impact on linguistic balance or human health [paras 4.287 to 4.303].

Habitat Regulation Assessment

- 8.38 I find that there is sufficient evidence to allow the SoS to conclude that subject to the implementation of the mitigation measures which would be secured through the requirements in the DCO, adverse effects on the integrity of any European protected site as a result of the development of the CFWF can be excluded. As a result it is not necessary for an appropriate assessment to be carried out.

Compulsory Acquisition

- 8.39 The compulsory acquisition powers sought in the DCO are limited. The case in the public interest for the project is compelling. In the event that the SoS decides to give consent and to make the order, there would be a compelling case in the public interest for the limited acquisition of and interference with rights [paras 6.1 to 6.25].

Overall Conclusion and Recommendation

- 8.40 The CFWF would accord with national policy in NPS EN-1 and EN-3. It would change the currently tranquil quality of the Clocaenog Forest and have significant and far ranging landscape and visual impacts on the application site and the surrounding area. However, such impacts are anticipated in national policy as a necessary consequence of large scale wind farm development. The site is within TAN 8 SSA(A), a part of Wales which, on the basis of empirical research, is the most appropriate location for large scale wind farm development. There is a strong presumption in favour of the project.

- 8.41 The SoS has an obligation to determine the application in accordance with the relevant NPSs except under certain conditions which include where the adverse impacts of the development would outweigh the benefits.
- 8.42 Whilst there would be a number of significant impacts which would result from the project, it is the impact on the residential amenity of three properties which I find to weigh significantly against the application. There is a risk that three properties would become so unattractive as a result of the proximity, scale and number of wind turbines, that they would become unsatisfactory as a place in which to live.
- 8.43 Having regard to the advice in PPW, this level of harm to residential amenity would not represent a standard of "good neighbourliness" which PPW recognises to be in the public interest to promote [paras 4.206 to 4.207].
- 8.44 There is no mitigation proposed, or likely to be effective, against the visual and aural impacts on these properties, and the provisions for compensation within the DCO would not apply to the impact on visual amenity of the residents [paras 4.81 and 4.303].
- 8.45 NPS EN-1 states that it is for the decision maker to judge whether the visual effects of a development on sensitive receptors such as local residents outweigh the benefits of the project. In this case I find that there is a risk that the impacts on the occupants of three properties would be severe, and regard must be had to the provisions of the Human Rights Act 1998. The impact on living conditions would amount to an interference with the private and family life and home of the occupants of the three properties in contravention of Article 8; and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998.
- 8.46 Nevertheless, there is the wider public interest to be weighed against the risk of harm to the residential amenity of the three properties. In this case it is a difficult and finely balanced judgement to be made. EN-1 identifies the need to address the impacts of climate change as urgent. The CFWF accords with national, regional and local policy in all other respects and would make a significant contribution to meeting that need, and the presumption in favour of the development established in EN-1 carries great weight [paras 8.3 and 8.4].
- 8.47 With the weight of national policy in favour of the project, I find that the wider public interest marginally outweighs the risk of harm to residential amenity. In these circumstances the interference with the human rights of the occupants of the three properties would be proportionate and justified in the public interest.

8.48 I recommend that the Order is made in the form set out in Appendix D.

APPENDICES

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APPENDIX A - EXAMINATION LIBRARY

The documents are grouped together by document type, and then grouped by the submission deadlines where relevant.

Each document has been given an identification number (i.e AoC_1), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning websites at the Clocaenog Forest Wind Farm project page:

<http://infrastructure.planningportal.gov.uk/projects/wales/clocaenog-forest-wind-farm/?ipcsection=docs>

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AD	Application Documents
AoC	Adequacy of Consultation Representations
PD	Procedural Decisions
HRG	Preliminary Meeting and Hearings Audio Recordings and Agendas
ASI	Accompanied Site Inspection Agendas
AS	Additional Submissions
RR	Relevant Representations
WR	Written Submissions
RQ_x	Responses to the Examining Authority's Questions
SoCG	Statements of Common Ground
LIR	Local Impact Report
OD	Other Documents
CRD	Core Reference Documents
CRQ_x	Comments on Responses to Examining Authority's Questions
CWR	Comments on Written Representations
CLIR	Comments on Local Impact Reports
WSC	Written Summaries of cases put orally at Hearings
RR17_x	Responses to Rule 17
CRR17	Comments on Responses to Rule 17
CPDCO	Comments on the proposed DCO changes
RLS_x	Responses to Late Submissions
CAIOT	Comments on the Applicant's Assessment of Impact of Tranquillity
CRIES	Comments on the RIES
FdDCO	Applicant's Final Draft DCO and Requirements
CFdDCO	Comments on Applicant's Final Draft DCO and Requirements
RWSC	Responses to Written Summaries of Cases Put Orally
CCdDCO	Applicant's corrected Final Draft DCO
CExADCO	Comments on Examining Authority's Draft DCO

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APPLICATION DOCS		
Application Form and Notices		
AD_001.1	<u>CFAppDoc01 - Formal Application Letter</u>	28/03/2013
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AD_017	<u>CFAppDoc04 Chapter07 - Land Use, Access and Forestry</u>	28/03/2013
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AD_032	<u>CFAppDoc04 Chapter15 Figures FINAL</u>	28/03/2013

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AD_035	<u>CFAppDoc04 Chapter17 - Glossary</u>	28/03/2013
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AD_057	<u>CFAppDoc04 Annex7.3 - Felling and Restocking Plans</u>	28/03/2013
AD_058	<u>CFAppDoc04 Annex8.1 - Surface Water Management Plan</u>	28/03/2013

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AD_059	<u>CFAppDoc04 Annex8.2 - Peat Depth Survey Report</u>	28/03/2013
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AD_066	<u>CFAppDoc04 Annex9.3 - Vegetation Survey Report</u>	28/03/2013
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AD_079	<u>CFAppDoc04 Annex10.1 - Breeding Bird Survey Report (WYG, 2009)</u>	28/03/2013
AD_080	<u>CFAppDoc04 Annex10.2 - Autumn / Winter 2008-09 Survey Report (WYG, 2009)</u>	28/03/2013
AD_081	<u>CFAppDoc04 Annex10.3 - Black Grouse Survey Report (WYG, 2009)</u>	28/03/2013
AD_082	<u>CFAppDoc04 Annex10.4 - A Survey of Nightjar Flight Heights at Clocaenog Forest in 2009</u>	28/03/2013

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AD_086	<u>CFAppDoc04 Annex10.7 - Collision Risk Model Report</u>	28/03/2013
AD_087	<u>CFAppDoc04 Annex10.8 - Noise Impact Assessment 2024/R3</u>	28/03/2013
AD_088	<u>CFAppDoc04 Annex10.9 - Confidential Annex</u>	28/03/2013
AD_089	<u>CFAppDoc04 Annex10.10 - Assessment of Anticipated Habitat Availability for Nightjar at Clocaenog Forest</u>	28/03/2013
AD_090	<u>CFAppDoc04 Annex10.11 - Vantage Point Viewsheds</u>	28/03/2013
AD_091	<u>CFAppDoc04 Annex11.1 - General Approach to Noise Impact</u>	28/03/2013
AD_092	<u>CFAppDoc04 Annex11.2 - Detailed Numerical Results</u>	28/03/2013
AD_093	<u>CFAppDoc04 Annex11.3 - Assessment Locations Descriptions and Photos</u>	28/03/2013
AD_094	<u>CFAppDoc04 Annex11.4 - Measured Background Noise and Wind Speed Data</u>	28/03/2013
AD_095	<u>CFAppDoc04 Annex11.5 - Noise Limits and Predictions (Clocaenog Only)</u>	28/03/2013
AD_096	<u>CFAppDoc04 Annex11.6 - Cumulative Assessment Details</u>	28/03/2013
AD_097	<u>CFAppDoc04 Annex11.7 - Wind Speed Calculations</u>	28/03/2013
AD_098	<u>CFAppDoc04 Annex11.8 - Hayes Mackenzie Partnership Draft ES Noise Chapter</u>	28/03/2013
AD_099	<u>CFAppDoc04 Annex12.1 - PIA Data</u>	28/03/2013
AD_100	<u>CFAppDoc04 Annex12.2 - Summary of Programme of Works and Anticipated Two Vehicle Trips</u>	28/03/2013
AD_101	<u>CFAppDoc04 Annex12.3 - Summary of Collett's Dry Run Report</u>	28/03/2013
AD_102	<u>CFAppDoc04 Annex12.4 - Proposed Mitigation</u>	28/03/2013
AD_103	<u>CFAppDoc04 Annex12.5 - Proposed Mitigation</u>	28/03/2013
AD_104	<u>CFAppDoc04 Annex12.6 - Proposed Mitigation</u>	28/03/2013
AD_105	<u>CFAppDoc04 Annex12.7 - B4501 Adopted Highway Plan</u>	28/03/2013
AD_106	<u>CFAppDoc04 Annex12.8 - Consultation Letters</u>	28/03/2013
AD_107	<u>CFAppDoc04 Annex13.1 - Telecommunications, Aviation and Shadow Flicker and other effects consultation</u>	28/03/2013

Doc Ref	Doc Name	Date Received/Sent
AD_108	<u>CFAppDoc04 Annex14.1- National and Local Policy Review</u>	28/03/2013
AD_109	<u>CFAppDoc04 Annex14.2 - Tourism Impacts</u>	28/03/2013
AD_110	<u>CFAppDoc04 Annex15.1 - Route Selection</u>	28/03/2013
AD_111	<u>CFAppDoc04 Annex15.2 - Holford Rules</u>	28/03/2013
AD_112	<u>CFAppDoc04 Annex15.3 - Legacy High Level Assessment</u>	28/03/2013
AD_113	<u>CFAppDoc04 Annex15.4 - SP Manweb Grid Connection Confirmation Letter</u>	28/03/2013
AD_114	<u>CFAppDoc05 NTS</u>	28/03/2013
AD_115	<u>CFAppDoc05 NTS Welsh</u>	28/03/2013
AD_116	<u>CFAppDoc06 - Scoping Opinion</u>	28/03/2013
Development Consent Order		28/03/2013
AD_117	<u>CFAppDoc07 - DCO</u>	28/03/2013
AD_118	<u>CFAppDoc08 - Explanatory Memorandum</u>	28/03/2013
Consultation Report		28/03/2013
AD_119	<u>CFAppDoc09 - Consultation Report Summary - Welsh</u>	28/03/2013
AD_120	<u>CFAppDoc09 - Consultation Report Summary</u>	28/03/2013
AD_121	<u>CFAppDoc09 - Consultation Report</u>	28/03/2013
AD_122	<u>CFAppDoc09 Annex A - Request for Scoping Opinion</u>	28/03/2013
AD_123	<u>CFAppDoc09 Annex AA - Example Section 47 feedback</u>	28/03/2013
AD_124	<u>CFAppDoc09 Annex B - Regulation 6(1)(b) notification</u>	28/03/2013
AD_125	<u>CFAppDoc09 Annex BB - Compliance of Clocaenog Forest Wind Farm Consultation with PA 2008</u>	28/03/2013
AD_126	<u>CFAppDoc09 Annex C - Regulation 9(1)(a) response</u>	28/03/2013
AD_127	<u>CFAppDoc09 Annex CC - Minutes from LPAs pre-submission meeting 2013</u>	28/03/2013
AD_128	<u>CFAppDoc09 Annex D - Section 46 notification</u>	28/03/2013
AD_129	<u>CFAppDoc09 Annex DD - February 2013 update available on the Project website</u>	28/03/2013
AD_130	<u>CFAppDoc09 Annex E - Draft Statement of Community Consultation</u>	28/03/2013
AD_131	<u>CFAppDoc09 Annex F - Local Planning Authority Consultation Responses on Draft Statement of Community Consultation</u>	28/03/2013
AD_132	<u>CFAppDoc09 Annex G - Published Statement of Community Consultation (Welsh and English)</u>	28/03/2013
AD_133	<u>CFAppDoc09 Annex H - Newsletter</u>	28/03/2013
AD_134	<u>CFAppDoc09 Annex I - Responses to Public Following Correspondence Regarding 2009</u>	28/03/2013

Doc Ref	Doc Name	Date Received/Sent
	Newsletter	
AD_135	CFAppDoc09 Annex J - Minutes from Community Liaison Group Meetings	28/03/2013
AD_136	CFAppDoc09 Annex K - October 2009 Exhibition Records	28/03/2013
AD_137	CFAppDoc09 Annex L - August and September 2011 Exhibition Records	28/03/2013
AD_138	CFAppDoc09 Annex M - Evidence of Engagement with Hard to Reach Groups	28/03/2013
AD_139	CFAppDoc09 Annex N - Section 48 Notices	28/03/2013
AD_140	CFAppDoc09 Annex O - Letter Issued to Section 42 Consultees Providing Section 48 Notices	28/03/2013
AD_141	CFAppDoc09 Annex P - Consultation Diary between 2008 and 2010	28/03/2013
AD_142	CFAppDoc09 Annex Q - DECC Scoping Opinion and Formal Scoping Responses	28/03/2013
AD_143	CFAppDoc09 Annex R - Pre-Consultation Letters Issued to Section 42, 43 and 44 Consultees	28/03/2013
AD_144	CFAppDoc09 Annex S Part 1 - Section 42 Consultation Responses	28/03/2013
AD_145	CFAppDoc09 Annex S Part 2 - Preliminary Environmental Information	28/03/2013
AD_146	CFAppDoc09 Annex T - Section 47 Consultation Responses	28/03/2013
AD_147	CFAppDoc09 Annex U - Indicative Schedule of Relevant Responses	28/03/2013
AD_148	CFAppDoc09 Annex W - Section 42 Non-Respondents	28/03/2013
AD_149	CFAppDoc09 Annex X - Section 42 Reminder Letters	28/03/2013
AD_150	CFAppDoc09 Annex Y - Example Section 42 feedback Letter	28/03/2013
AD_151	CFAppDoc09 Annex Z - Follow up Correspondence with Section 47 Consultees	28/03/2013
Other Reports / Statements		28/03/2013
AD_152	CFAppDoc10 - Hab Reg Assess Summary - Welsh	28/03/2013
AD_153	CFAppDoc10 - Hab Reg Assess Summary	28/03/2013
AD_154	CFAppDoc11 - Socio-economic Report	28/03/2013
Compulsory Acquisition Information		28/03/2013
AD_155	CFAppDoc12 - Statement of Funding - Welsh	28/03/2013
AD_156	CFAppDoc12 - Statement of Funding	28/03/2013
AD_157	CFAppDoc13 - Statement of Reasons Summary - Welsh	28/03/2013
AD_158	CFAppDoc13 - Statement of Reasons	28/03/2013

Doc Ref	Doc Name	Date Received/Sent
	<u>Summary</u>	
AD_159	<u>CFAppDoc13 - Statement of Reasons</u>	28/03/2013
AD_160	<u>CFAppDoc14 - Book of Reference</u>	28/03/2013
Additional Information for Specific Types of Infrastructure		28/03/2013
AD_161	<u>CFAppDoc15 - Grid Statement Summary - Welsh</u>	28/03/2013
AD_162	<u>CFAppDoc15 - Grid Statement Summary</u>	28/03/2013
AD_163	<u>CFAppDoc15 - Grid Statement</u>	28/03/2013
Other Documents		28/03/2013
AD_164	<u>CFAppDoc16 - Option Agreement</u>	28/03/2013
AD_165	<u>CFAppDoc17 - Planning Statement Summary - Welsh</u>	28/03/2013
AD_166	<u>CFAppDoc17 - Planning Statement Summary</u>	28/03/2013
AD_167	<u>CFAppDoc17 - Planning Statement</u>	28/03/2013
AD_168	<u>CFAppDoc18 - Statutory Nuisance Statement</u>	28/03/2013
AD_169	<u>CFAppDoc18 - Statutory Nuisance Summary - Welsh</u>	28/03/2013
AD_170	<u>CFAppDoc18 - Statutory Nuisance Summary</u>	28/03/2013
AD_171	<u>CFAppDoc19 - Design and Access Statement</u>	28/03/2013
AD_172	<u>CFAppDoc19 - Design and Access Summary - Welsh</u>	28/03/2013
AD_173	<u>CFAppDoc19 - Design and Access Summary</u>	28/03/2013
AD_174	<u>CFAppDoc20 - Traffic Management Plan</u>	28/03/2013
AD_175	<u>CFAppDoc21 - PLANCONTROL</u>	28/03/2013
AD_176	<u>CFAppDoc21 - PLANSUBSTATION</u>	28/03/2013
Plans / Drawings / Sections		28/03/2013
AD_177	<u>Land Plan - 01</u>	28/03/2013
AD_178	<u>Land Plan - 02</u>	28/03/2013
AD_179	<u>Land Plan - 03</u>	28/03/2013
AD_180	<u>Land Plan - 04</u>	28/03/2013
AD_181	<u>Land Plan - 05</u>	28/03/2013
AD_182	<u>Land Plan - 06</u>	28/03/2013
AD_183	<u>Land Plan - 07</u>	28/03/2013
AD_184	<u>Land Plan - Key Plan</u>	28/03/2013
AD_185	<u>Works Plan - 01</u>	28/03/2013
AD_186	<u>Works Plan - 02</u>	28/03/2013
AD_187	<u>Works Plan - 03</u>	28/03/2013
AD_188	<u>Works Plan - 04</u>	28/03/2013
AD_189	<u>Works Plan - 05</u>	28/03/2013
AD_190	<u>Works Plan - 06</u>	28/03/2013
AD_191	<u>Works Plan - 07</u>	28/03/2013
AD_192	<u>Works Plan - Key Plan</u>	28/03/2013

Doc Ref	Doc Name	Date Received/Sent
AD_193	Access Plan - 01	28/03/2013
AD_194	Access Plan - 02	28/03/2013
AD_195	Access Plan - 03	28/03/2013
AD_196	Access Plan - 04	28/03/2013
AD_197	Access Plan - 05	28/03/2013
AD_198	Access Plan - 06	28/03/2013
AD_199	Access Plan - 07	28/03/2013
AD_200	Access Plan - Key Plan	28/03/2013
AD_201	Indicative Felling Plan - 01	28/03/2013
AD_202	Indicative Felling Plan - 02	28/03/2013
AD_203	Indicative Felling Plan - 03	28/03/2013
AD_204	Indicative Felling Plan - 04	28/03/2013
AD_205	Indicative Felling Plan - 05	28/03/2013
AD_206	Indicative Felling Plan - 06	28/03/2013
AD_207	Indicative Felling Plan - 07	28/03/2013
AD_208	Indicative Felling Plan - Key Plan	28/03/2013
PROJECT DOCUMENTS		
Adequacy of Consultation Representations		
AoC_001	AoC-0001 Adequacy of Consultation Wrexham County Borough Council	08/04/2013
AoC_002	AoC-0002 Adequacy of Consultation Denbighshire and Conwy County Councils	11/04/2013
Procedural Decisions		
PD_001	Clocaenog Forest Wind Farm Acceptance letter FINAL	23/04/2013
PD_002	Clocaenog Final s55 Checklist	23/04/2013
PD_003	Rule 4 and 6 letter FINAL	01/08/2013
PD_004	Clocaenog Forest Rule 8 Letter	23/09/2013
PD_005	Rule 8(3) and 13 variation to timetable and notification of hearing	15/10/2013
PD_006	Rule 8(3), Rule 16 and Rule 17 Notification	11/11/2013
PD_007	Examining Authority's procedural letter issuing Second Written Questions	21/11/2013
PD_008	Clocaenog RIES FINAL	12/12/2013
PD_009	Rule 8, 8(3) and 13 Notification of Hearings, Variation to timetable and Issue of RIES letter	13/12/2013
PD_010	Rule 8(3) and Rule 17 notification letter	21/01/2014
PD_011	Rule 17 & 8(3) request for further information and amendment to the timetable notification	07/02/2014
PD_012	Rule 17 & 8(3) request for further information and amendment to the timetable	19/02/2014

Doc Ref	Doc Name	Date Received/Sent
	notification	
PD_013	Rule 17 & 8(3) request for further information and amendment to the timetable notification following submission of applicant's corrected final draft DCO	20/02/2014
PD_014	Examining Authority's Rule 17 and Rule 8(3) letter to applicant and MEAG	21/02/2014
PD_015	Examining Authority's draft Development Consent Order (DCO)	28/02/2014
PD_016	Rule 17 letter requesting comments on ExA's draft DCO	28/02/2014
PD_017	Notification of Completion of ExA's Examination Letter	13/03/2014
PM & Hearings – Audio recordings and Agendas		
HRG_001	Preliminary Meeting audio	16/09/2013
HRG_002	Agenda for Issue Specific Hearing	29/10/2013
HRG_003	Audio Recording of Issue Specific Hearing 7 November 2013	13/11/2013
HRG_004_	Updated agenda for Issue Specific Hearing on Policy	14/01/2014
HRG_005	Updated agenda for Issue Specific Hearing on Environment	14/01/2014
HRG_006	Agenda for Issue Specific Hearing on Mitigation and Requirements	20/01/2014
HRG_007	Agenda for Second Issue Specific Hearing on the Development Consent Order	20/01/2014
HRG_008	Audio recording of the Issue Specific Hearing on Policy held on 21 January 2014	07/02/2014
HRG_009	Audio recording of the Issue Specific Hearing on the Environment held on 22 January 2014 (part 1)	07/02/2014
HRG_010	Audio recording of the Issue Specific Hearing on the Environment held on 22 January 2014 (part 2)	07/02/2014
HRG_011	Audio recording of the Issue Specific Hearing on the Environment held on 22 January 2014 (part 3)	07/02/2014
HRG_012	Audio recording of the Issue Specific Hearing on the Environment held on 22 January 2014 (part 4)	07/02/2014
HRG_013	Audio recording of the Issue Specific Hearing on the Environment held on 23 January 2014 (part 1)	07/02/2014
HRG_014	Audio recording of the Issue Specific Hearing on the Environment held on 23 January 2014 (part 2)	07/02/2014
HRG_015	Audio recording of the Open Floor Hearing	07/02/2014

Doc Ref	Doc Name	Date Received/Sent
	<u>held on 28 January 2014 at 2pm</u>	
HRG_016	<u>Audio recording of the Open Floor Hearing held on 28 January 2014 at 6.30pm</u>	07/02/2014
HRG_017	<u>Audio recording of the Issue Specific Hearing on Mitigation and Requirements held on 29 January 2014 (part 1)</u>	07/02/2014
HRG_018	<u>Audio recording of the Issue Specific Hearing on Mitigation and Requirements held on 29 January 2014 (part 2)</u>	07/02/2014
HRG_019	<u>Audio recording of the Issue Specific Hearing on Mitigation and Requirements held on 29 January 2014 (part 3)</u>	07/02/2014
HRG_020	<u>Audio recording of the Compulsory Acquisition Hearing held on 29 January 2014</u>	07/02/2014
HRG_021	<u>Audio recording for the second Issue Specific Hearing on DCO held on 29 January 2014</u>	07/02/2014
HRG_022	<u>Audio recording of the Open Floor Hearing held on 30 January 2014</u>	07/02/2014
Accompanied Site Inspection Agendas		
ASI_001	<u>Accompanied Site Visit Itinerary Oct-Nov 2013</u>	22/10/2013
ASI_002	<u>Accompanied Site Inspection itinerary 28 November 2013</u>	26/11/2013
Additional Submissions		
AS_001	<u>Late Relevant Representation - Mrs Lear</u>	20/06/2013
AS_002	<u>University Health Board Responses to ExA's questions</u>	25/10/2013
AS_003	<u>Mark Isherwood</u>	03/11/2013
AS_004	<u>Ian Gardner</u>	23/09/2013
AS_005	<u>Ian Sims and 17 others from Graigfechan</u>	12/11/2013
AS_006	<u>Jane McCormack</u>	13/11/2013
AS_007	<u>Additional Submission - Sheila Harman</u>	06/12/2013
AS_008	<u>Additional Submission Peter Cobbold</u>	10/12/2013
AS_009	<u>Additional Submission - University Health Board</u>	13/12/2013
AS_010	<u>Additional Submission 2 - Sheila Harman</u>	07/01/2014
AS_011	<u>Additional Submission - Jo Hughes - British Horse Society</u>	09/01/2014
AS_012	<u>Additional Submission - Welsh Ambulance Services NHS Trust</u>	06/01/2014
AS_013	<u>Additional Submission - The Snowdonia Society</u>	17/01/2014
AS_014	<u>Additional submission 2 - Peter Cobbold</u>	27/01/2014
AS_015	<u>Additional Submission Ros Fischer</u>	04/02/2014
AS_016	<u>Additional Submission Paul Marfleet</u>	10/02/2014
AS_017	<u>Additional Submission - MEAG</u>	13/02/2014

Doc Ref	Doc Name	Date Received/Sent
AS_018	Additional Submission 2 - Ian Gardner	25/02/2014
AS_019	Additional Submission 3 - Sheila Harman	03/03/2014
AS_020	Additional Submission – s135 Crown land consent letter	04/03/2014
AS_021	Additional Submission - RWE npower renewables	10/03/2014
AS_022	Additional Submission 2 - MEAG MUNICH ERGO	10/03/2014
Relevant Representations		
RR_001	The Constituents/Residents of Clwyd West	12/06/2013
RR_002	John Broughton	12/06/2013
RR_003	Adrian Walls	12/06/2013
RR_004	Karen Roden	12/06/2013
RR_005	Linda Ledward	12/06/2013
RR_006	Clwydian Range and Dee Valley AONB Joint Advisory Committee	12/06/2013
RR_007	British Horse Society	12/06/2013
RR_008	Welsh Government	12/06/2013
RR_009	Clocaenog Against Wind Turbines	12/06/2013
RR_010	Robert Nigel Shillito	12/06/2013
RR_011	Ian Gardner	12/06/2013
RR_012	Janet Bord	12/06/2013
RR_013	Richard Welch	12/06/2013
RR_014	Patrice McCormack	12/06/2013
RR_015	Campaign for the Protection of Rural Wales (Clwyd Branch)	12/06/2013
RR_016	Michael Williams	12/06/2013
RR_017	Jane Hemming	12/06/2013
RR_018	Clocaenog Community Council	12/06/2013
RR_019	Barrie Robert Jones	12/06/2013
RR_020	Richard Gary Owen	12/06/2013
RR_021	Ian Rogers	12/06/2013
RR_022	Judy Young	12/06/2013
RR_023	David Heath	12/06/2013
RR_024	Peter Woodhall	12/06/2013
RR_025	John Smith	12/06/2013
RR_026	Sandra Canter	12/06/2013
RR_027	David Canter	12/06/2013
RR_028	John David Fleet	12/06/2013
RR_029	Karen Dunford	12/06/2013
RR_030	Wendy Charles-Warner	12/06/2013
RR_031	Simon Geary	12/06/2013
RR_032	Keith Dunderdale	12/06/2013
RR_033	Charlotte McClelland Kite	12/06/2013

Doc Ref	Doc Name	Date Received/Sent
RR_034	<u>Dafydd Roberts</u>	12/06/2013
RR_035	<u>Snowdonia National Park Authority</u>	12/06/2013
RR_036	<u>Ian Sims</u>	12/06/2013
RR_037	<u>L Harrison</u>	12/06/2013
RR_038	<u>W R A Shuttleworth</u>	12/06/2013
RR_039	<u>Peter Cobbold</u>	12/06/2013
RR_040	<u>Julia Owen</u>	12/06/2013
RR_041	<u>D H Insall</u>	12/06/2013
RR_042	<u>Brynbach Ltd</u>	12/06/2013
RR_043	<u>Dwr Cymru Welsh Water</u>	12/06/2013
RR_044	<u>Martin Mclachlan</u>	12/06/2013
RR_045	<u>Jean Marie Vacancies Ltd</u>	12/06/2013
RR_046	<u>John Davies</u>	12/06/2013
RR_047	<u>Simon Fox</u>	12/06/2013
RR_048	<u>Robert Mervyn Wynne</u>	12/06/2013
RR_049	<u>Neil Dalleywater</u>	12/06/2013
RR_050	<u>David Livesey</u>	12/06/2013
RR_051	<u>Peter Young</u>	12/06/2013
RR_052	<u>Sally Heaney</u>	12/06/2013
RR_053	<u>Christopher Wynne</u>	12/06/2013
RR_054	<u>Colin Morgan</u>	12/06/2013
RR_055	<u>Stephen John Turpin</u>	12/06/2013
RR_056	<u>Angela Morgan</u>	12/06/2013
RR_057	<u>Victor Lindsay</u>	12/06/2013
RR_058	<u>ScottishPower</u>	12/06/2013
RR_059	<u>Jacqui Dunderdale</u>	12/06/2013
RR_060	<u>Peter Sandle</u>	12/06/2013
RR_061	<u>Catharyne Dawne Punyer</u>	12/06/2013
RR_062	<u>Susan Davies</u>	12/06/2013
RR_063	<u>Timothy Gorin</u>	12/06/2013
RR_064	<u>Derwen Community Council</u>	12/06/2013
RR_065	<u>Robin Hill</u>	12/06/2013
RR_066	<u>Marcus Demuth</u>	12/06/2013
RR_067	<u>Jonathan Baldwin</u>	12/06/2013
RR_068	<u>North Wales Association of Town and Larger community Councils</u>	12/06/2013
RR_069	<u>Joseph G. Jones</u>	12/06/2013
RR_070	<u>Ian Reay</u>	12/06/2013
RR_071	<u>Joe Welch</u>	12/06/2013
RR_072	<u>Anne Lloyd</u>	12/06/2013
RR_073	<u>Neil Morgan</u>	12/06/2013
RR_074	<u>Derek Brabrook</u>	12/06/2013
RR_075	<u>Roger Timothy Sims</u>	12/06/2013
RR_076	<u>Ifor H Jones</u>	12/06/2013

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RR_077	<u>Huw Davies</u>	12/06/2013
RR_078	<u>Andy Lowe</u>	12/06/2013
RR_079	<u>Michael Bird</u>	12/06/2013
RR_080	<u>B L Lockhart</u>	12/06/2013
RR_081	<u>Elgan Roberts</u>	12/06/2013
RR_082	<u>John Morgan</u>	12/06/2013
RR_083	<u>Edward Henry Edwards</u>	12/06/2013
RR_084	<u>Janet M Morgan</u>	12/06/2013
RR_085	<u>Peter Welford</u>	12/06/2013
RR_086	<u>C W Park</u>	12/06/2013
RR_087	<u>Wayne Carrow</u>	12/06/2013
RR_088	<u>Johanna Jackson</u>	12/06/2013
RR_089	<u>Gordon T Dyos</u>	12/06/2013
RR_090	<u>John Uden</u>	12/06/2013
RR_091	<u>P Spencer</u>	12/06/2013
RR_092	<u>Dave Gait</u>	12/06/2013
RR_093	<u>Simon P White</u>	12/06/2013
RR_094	<u>Peter W Smith</u>	12/06/2013
RR_095	<u>Conwy Rural Partnership</u>	12/06/2013
RR_096	<u>Hilary Madeley</u>	12/06/2013
RR_097	<u>David Huw Roberts</u>	12/06/2013
RR_098	<u>Neil Coppack</u>	12/06/2013
RR_099	<u>Peter Barrar</u>	12/06/2013
RR_100	<u>North Wales Wildlife Trust</u>	12/06/2013
RR_101	<u>Richard Glynne Jones</u>	12/06/2013
RR_102	<u>Sheila Harman</u>	12/06/2013
RR_103	<u>Richard Parry</u>	12/06/2013
RR_104	<u>M J Rose</u>	12/06/2013
RR_105	<u>Tegni Cymru Cyf</u>	12/06/2013
RR_106	<u>Wrexham County Borough Council</u>	12/06/2013
RR_107	<u>David Chew</u>	12/06/2013
RR_108	<u>Christopher Neil Penfold</u>	12/06/2013
RR_109	<u>Peter Detheridge</u>	12/06/2013
RR_110	<u>Llewelyn Edwards</u>	12/06/2013
RR_111	<u>Ross Kenyon</u>	12/06/2013
RR_112	<u>Julie Danson</u>	12/06/2013
RR_113	<u>Natasha Frost</u>	12/06/2013
RR_114	<u>Andrew Marshall</u>	12/06/2013
RR_115	<u>Chris Newens</u>	12/06/2013
RR_116	<u>Philip Danson</u>	12/06/2013
RR_117	<u>Denbighshire County Council</u>	12/06/2013
RR_118	<u>Mark McDonough</u>	12/06/2013
RR_119	<u>Mary Dowell-Jones</u>	12/06/2013
RR_120	<u>Ceri Ranson</u>	12/06/2013

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RR_121	North Wales Fire & Rescue Service	12/06/2013
RR_122	C.A. Blackwell (Contracts) Limited	12/06/2013
RR_123	Annest Ellis	12/06/2013
RR_124	Rhian Elizabeth Ellis	12/06/2013
RR_125	Nantglyn Community Council	12/06/2013
RR_126	Gwyneth Griffiths	12/06/2013
RR_127	Cyffylliog and Bontuchel Community Association	12/06/2013
RR_128	Miriam Ellis	12/06/2013
RR_129	Judy Welford	12/06/2013
RR_130	D Paddy	12/06/2013
RR_131	Andrew Jedwell	12/06/2013
RR_132	Warwick Nicholson	12/06/2013
RR_133	Eleri Griffiths	12/06/2013
RR_134	John Hopkinson	12/06/2013
RR_135	John Williams	12/06/2013
RR_136	David Baugh	12/06/2013
RR_137	Menai Baugh	12/06/2013
RR_138	Gill Lewis Groves	12/06/2013
RR_139	Viv Jones	12/06/2013
RR_140	Andrew Graham	12/06/2013
RR_141	Berwyn Maelor Roberts	12/06/2013
RR_142	Jane McCormack	12/06/2013
RR_143	Peter Cottee	12/06/2013
RR_144	David Poole	12/06/2013
RR_145	Tina Davies	12/06/2013
RR_146	Kelvin Boys-Yates	12/06/2013
RR_147	Melin Wynt Cambwll Cyf	12/06/2013
RR_148	John Ellis Pritchard	12/06/2013
RR_149	Sheila Pritchard	12/06/2013
RR_150	Dena Proctor	12/06/2013
RR_151	Declan Pritchard	12/06/2013
RR_152	Louise Pritchard	12/06/2013
RR_153	Peter Field	12/06/2013
RR_154	Public Health Wales	12/06/2013
RR_155	John F Griffiths	12/06/2013
RR_156	Dr Graham Jackson	12/06/2013
RR_157	Total Wind (UK) Ltd	12/06/2013
RR_158	Cai Anwyl Williams	12/06/2013
RR_159	Annabel Gravestock	12/06/2013
RR_160	J C Madoc-Jones	12/06/2013
RR_161	Holmes	12/06/2013
RR_162	Adrian Hibbert	12/06/2013
RR_163	Charlotte Holliday	12/06/2013

Doc Ref	Doc Name	Date Received/Sent
RR_164	Clwyd Jones	12/06/2013
RR_165	Andrew Holliday	12/06/2013
RR_166	Mr Ceiriog Jones	12/06/2013
RR_167	Paul Dumbill	12/06/2013
RR_168	Cara Anwyl-Williams	12/06/2013
RR_169	Brian Gulland	12/06/2013
RR_170	David Roberts	12/06/2013
RR_171	Chris Dutton	12/06/2013
RR_172	Colin Bradley	12/06/2013
RR_173	J Lister	12/06/2013
RR_174	Richard David Hattersley	12/06/2013
RR_175	Katy Williams	12/06/2013
RR_176	Jeff Brimble	12/06/2013
RR_177	Richard Henderson	12/06/2013
RR_178	Eira Davies	12/06/2013
RR_179	Karen Webb	12/06/2013
RR_180	Owain Llyr Williams	12/06/2013
RR_181	Robert Jones	12/06/2013
RR_182	Catherine Walker	12/06/2013
RR_183	Directorate of Airspace Policy, Civil Aviation Authority	12/06/2013
RR_184	John Appleby	12/06/2013
RR_185	Paul Jefferys	12/06/2013
RR_186	Jones Bros Ruthin Civil Engineering Co Ltd	12/06/2013
RR_187	James Dodd	12/06/2013
RR_188	Conwy County Borough Council	12/06/2013
RR_189	Carys Roberts	12/06/2013
RR_190	Helen Gerald	12/06/2013
RR_191	Christine Ellis	12/06/2013
RR_192	Julie M Masters	12/06/2013
RR_193	David Jones MP	12/06/2013
RR_194	Matthew Pritchard	12/06/2013
RR_195	Kathy Barham	12/06/2013
RR_196	Geraint Woolford	12/06/2013
RR_197	Christopher Burns	12/06/2013
RR_198	Adele Hughes	12/06/2013
RR_199	Melissa Davies	12/06/2013
RR_200	Peter Davies	12/06/2013
RR_201	Cheryl Davies	12/06/2013
RR_202	Stephen Williams	12/06/2013
RR_203	Rex Wade	12/06/2013
RR_204	Stephen Matthews	12/06/2013
RR_205	Cefn Meiriadog Community Council	12/06/2013
RR_206	Ann Jones	12/06/2013

Doc Ref	Doc Name	Date Received/Sent
RR_207	Trevor Owen	12/06/2013
RR_208	Ynyr Edwards	12/06/2013
RR_209	Gordon Owen	12/06/2013
RR_210	Haf Jones	12/06/2013
RR_211	Henllan Community Council	12/06/2013
RR_212	Chris Brown	12/06/2013
RR_213	Betws Gwerfyl Goch Community Council	12/06/2013
RR_214	Mr L Starling	12/06/2013
RR_215	Owner/Occupier	12/06/2013
RR_216	Mark Harris	12/06/2013
RR_217	Christine Jones	12/06/2013
RR_218	John B Morgan	12/06/2013
RR_219	Hywel Jones	12/06/2013
RR_220	Andrew Robson	12/06/2013
RR_221	Charmain Poole	12/06/2013
RR_222	Ann Robson	12/06/2013
RR_223	Andrew Horan	12/06/2013
RR_224	British Horse Society North East Wales	12/06/2013
RR_225	Natural Resources Wales (Cyfoeth Naturiol Cymru)	12/06/2013
RR_226	Geraint Roberts	12/06/2013
RR_227	Carys Roberts	12/06/2013
RR_228	DRB Group	12/06/2013
RR_229	MaryDei Trust	12/06/2013
RR_230	Rheinallt Williams	12/06/2013
RR_231	Oliver Bickford	12/06/2013
RR_232	Rhian Evans	12/06/2013
RR_233	MEAG MUNICH ERGO AssetManagement GmbH	12/06/2013
RR_234	MEAG MUNICH ERGO AssetManagement GmbH	12/06/2013
RR_235	Leila Chattell	12/06/2013
RR_236	Bethan Jones	12/06/2013
RR_237	Public Health England	12/06/2013
RR_238	Iso Fab Ltd	12/06/2013
RR_239	NATS (En Route) Public Limited Company	12/06/2013
RR_240	R Geraint Williams	12/06/2013
RR_241	Rosalind and Robert Sulley	12/06/2013
RR_242	Catherine Susan Black	12/06/2013
RR_243	Alys Owen	12/06/2013
RR_244	Angela Mitchell	12/06/2013
RR_245	Charles Ford	12/06/2013
RR_246	Tom Barham	12/06/2013
RR_247	Brian Green	12/06/2013
RR_248	Clare Penfold	12/06/2013

Doc Ref	Doc Name	Date Received/Sent
RR_249	<u>V C Sennett</u>	12/06/2013
RR_250	<u>Mrs Del Brown</u>	12/06/2013
RR_251	<u>Elen Wyn Roberts</u>	12/06/2013
RR_252	<u>Lleucu Anwyl Williams</u>	12/06/2013
RR_253	<u>Toby Roberts</u>	12/06/2013
RR_254	<u>Olwen Cottle</u>	12/06/2013
RR_255	<u>Llyr Anwyl Williams</u>	12/06/2013
RR_256	<u>Liz Guest</u>	12/06/2013
RR_257	<u>Aled W Ellis</u>	12/06/2013
RR_258	<u>Swyn Anwyl</u>	12/06/2013
RR_259	<u>Nanw Williams</u>	12/06/2013
RR_260	<u>Aled Cottle</u>	12/06/2013
RR_261	<u>Jenny Stewart Cox</u>	12/06/2013
RR_262	<u>Joy Nicholson</u>	12/06/2013
RR_263	<u>Carol Lally</u>	12/06/2013
RR_264	<u>G L Roberts</u>	12/06/2013
RR_265	<u>Mike Cottle</u>	12/06/2013
RR_266	<u>Mr John Michael Edwards</u>	12/06/2013
RR_267	<u>Norma Horton</u>	12/06/2013
RR_268	<u>John Yates</u>	12/06/2013
RR_269	<u>A C Washington</u>	12/06/2013
RR_270	<u>Llanfair Dyffryn Clwyd Community Council</u>	12/06/2013
RR_271	<u>Brian Wilcox</u>	12/06/2013
RR_272	<u>Ann Gould</u>	12/06/2013
RR_273	<u>Michael Horton</u>	12/06/2013
RR_274	<u>Helen Evans</u>	12/06/2013
RR_275	<u>R Evans</u>	12/06/2013
RR_276	<u>Keith Askew</u>	12/06/2013
RR_277	<u>MEAG MUNICH ERGO Assetmanagement GmbH</u>	12/06/2013
DEADLINE 1: 21/10/13		
Written Representations		
WR_001	<u>WR 01 Michael Bird</u>	21/10/2013
WR_002	<u>WR 02 R P Tilby Brynbach Ltd</u>	21/10/2013
WR_003	<u>WR 03 Mrs J M Tilby Jean Marie Vacancies Ltd</u>	21/10/2013
WR_004	<u>WR 04 Dr Robert Nigel Shillito</u>	21/10/2013
WR_005	<u>WR 05 Peter Detheridge CPRW Conwy Branch</u>	21/10/2013
WR_006	<u>WR 06 Written Representation 10017369 Gary Owen</u>	21/10/2013
WR_007	<u>WR 07 Tony Hughes on behalf of the Clwydian Range and Dee Valley AONB Joint Advisory Committee</u>	21/10/2013

Doc Ref	Doc Name	Date Received/Sent
WR_008	WR 08 John Morgan	21/10/2013
WR_009	WR 09 Written Representation 10018445 Ifor H Jones	21/10/2013
WR_010	WR 10 10017315 Michael Williams	21/10/2013
WR_011	WR 11 Jane McCormack	21/10/2013
WR_012	WR 12 Robert Mervyn Wynne	21/10/2013
WR_013	WR 13 John Smith	21/10/2013
WR_014	WR 14 Janet Morgan	21/10/2013
WR_015	WR 15 Wendy Charles-Warner	21/10/2013
WR_016	WR 16 Richard Parry	21/10/2013
WR_017	WR 17 David Heath	21/10/2013
WR_018	WR 18 Janet S Rogers on behalf of Clocaenog Community Council	21/10/2013
WR_019	WR 19 Michael W Moriarty CPRW Clwyd Branch	21/10/2013
WR_020	WR 20 Ian Gardner	21/10/2013
WR_021	WR 21 Dr David J Counsell	21/10/2013
WR_022	WR 22 Sheila Harman	21/10/2013
WR_023	WR 23 Ian Gardner Nantglyn Community Council	21/10/2013
WR_024	WR 24 Jacqui Dunderdale	21/10/2013
WR_025	WR 25 Mr Keith Dunderdale	21/10/2013
WR_026	WR 26 Peter Cobbold	21/10/2013
WR_027	WR 27 J Hopkinson	21/10/2013
WR_028	WR 28 Ian Rogers	21/10/2013
WR_029/RQ_1_010	WR 29 Natural Resources Wales combined WR and response to ExA's 1st questions	21/10/2013
WR_030	WR 30 Martin McLachlan	21/10/2013
WR_031	WR 31 Ian Sims	21/10/2013
WR_032	WR 32 Hilary Madeley	21/10/2013
WR_033	WR 33 Conwy County Borough Council and Denbighshire County Council Joint	21/10/2013
WR_034	WR 34 MEAG	21/10/2013
WR_035	WR 35 Snowdonia National Park Authority	21/10/2013
WR_036	WR 36 RWE Npower Renewables	21/10/2013
WR_037	WR 55 North Wales Wildlife Trust	21/10/2013
WR_038	WR 56 Energetics Gas Limited	21/10/2013
WR_039	WR 57 Michael Williams	21/10/2013
WR_040	LATE SUBMISSION WR 58 Welsh Government	06/11/2013 (late)
WR_041	LATE SUBMISSION WR 59 Jo Hughes	04/11/2013 (late)
WR_042	LATE SUBMISSION WR 60 Sheila Harman	07/11/2013 (late)
WR_043	LATE SUBMISSION WR 61 David Insall	08/11/2013 (late)
Responses to the ExA's 1st Questions		

Doc Ref	Doc Name	Date Received/Sent
RQ_1_001	<u>Ian Sims Response to ExA's 1st Questions</u>	21/10/2013
RQ_1_002	<u>Michael Skuse Response to ExA's 1st Questions</u>	21/10/2013
RQ_1_003	<u>Ian Gardner Response to ExA's 1st Questions</u>	21/10/2013
RQ_1_004	<u>Hilary Madeley Response to the ExA's 1st Questions</u>	21/10/2013
RQ_1_005	<u>Public Health England Response to ExA's Questions</u>	21/10/2013
RQ_1_006	<u>CLOC-00001 Bryan Wilcox Response to the ExA's written questions</u>	21/10/2013
RQ_1_007	<u>Conwy County Borough Council and Denbighshire County Council Joint</u>	21/10/2013
RQ_1_008	<u>RWE npower renewables CLOC-AP001 Responses to ExA's 1st written questions</u>	21/10/2013
RQ_1_009	<u>John Hopkinson Response to ExA's 1st Questions</u>	21/10/2013
RQ_1_010/WR_029	<u>WR 29 Natural Resources Wales combined WR and response to ExA's 1st questions</u>	21/10/2013
Statements of Common Ground		
SoCG_001	<u>RWE npower renewables SoCG between RWE and DCC CCBC</u>	21/10/2013
SoCG_002	<u>RWE npower renewables SoCG between RWE and NRW</u>	21/10/2013
Local Impact Reports		
LIR_001	<u>Conwy County Borough Council and Denbighshire County Council Joint</u>	21/10/2013
LIR_002	<u>LATE SUBMISSION Addendum to the joint Conwy County Borough Council and Denbighshire County Council Local Impact Report</u>	14/11/2013 (late)
Other Documents		
OD_001	<u>RWE Npower Renewables - Health Impact Report</u>	21/10/2013
OD_002	<u>RWE Npower Renewables - Updated Book of Reference</u>	21/10/2013
OD_003	<u>RWE Npower Renewables - Erratum to the Environmental Statement</u>	21/10/2013
OD_004	<u>RWE Npower Renewables - Applicant's schedule of mitigation works with associated DCO Requirement</u>	21/10/2013
OD_005	<u>NPower Renewables - Traffic Management Plan</u>	21/10/2013
Core Reference Documents		
CRD_001	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_002	<u>RWE NPower Renewables - Core Reference</u>	21/10/2013

Doc Ref	Doc Name	Date Received/Sent
	<u>Documents</u>	
CRD_003	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_004	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_005	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_006	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_007	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_008	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_009	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_010	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_011	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_012	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
CRD_013	<u>RWE NPower Renewables - Core Reference Documents</u>	21/10/2013
DEADLINE 2: 14/11/13		
Comments on Responses to ExA's 1st Questions		
CRQ_1_001	<u>Comments on responses to ExA's questions Bryan Wilcox CLOC-0001</u>	14/11/2013
CRQ_1_002	<u>Comments on responses to ExA's questions Natural Resources Wales</u>	14/11/2013
CRQ_1_003	<u>Comments responses on ExA's first questions - Applicant</u>	14/11/2013
Comments on Written Representations		
CWR_001	<u>Adrian Walls on behalf of Denbighshire Local Access Forum</u>	14/11/2013
CWR_002	<u>Andrew Batterton on behalf of MEAG</u>	14/11/2013
CWR_003	<u>RWE nPower Renewables - Response to MUNICH ERGO</u>	14/11/2013
CWR_004	<u>RWE nPower Renewables</u>	14/11/2013
Comments on Local Impact Reports		
CLIR_001	<u>CLIR 1 Jo Hughes British Horse Society</u>	14/11/2013
CLIR_002	<u>CLIR 2 RWE nPower Renewables</u>	14/11/2013
Statements of		

Doc Ref	Doc Name	Date Received/Sent
Common Ground (cont.)		
SoCG_003	RWE nPower Renewables - SoCG with DCC and CCBC on DCO requirements	14/11/2013
SoCG_004	RWE nPower Renewables SoCG between applicant and NRW	14/11/2013
Written summaries of cases put orally at Issue Specific Hearing on DCO - 07/11/2013		
WSC_001	RWE nPower Renewables - DCO hearing written summary	14/11/2013
WSC_002	Councillor Janet Rogers on behalf of Clocaenog Community Council	14/11/2013
Other Documents (cont.)		
OD_006	RWE nPower Renewables - Book of Reference	14/11/2013
OD_007	RWE nPower Renewables - Tranquillity Assessment	14/11/2013
OD_008	RWE nPower Renewables - Corrected Draft DCO	14/11/2013
OD_009	RWE nPower Renewables - Corrections of errata or hypographical errors within the DCO EM and proposed amendments to the draft DCO	14/11/2013
Core Reference Documents (cont.)		
CRD_014	RWE npower renewables - Core Reference Documents	14/11/2013
DEADLINE 3: 15/11/13		
Response to rule 17 dated 11/11/2013		
RR17_1_001	RWE nPower Renewables	15/11/2013
DEADLINE 4: 22/11/13		
Comments on responses to rule 17		
CRR17_001	Christine Jones.pdf	22/11/2013
CRR17_002	Michael Williams and Jan Rogers.pdf	22/11/2013
CRR17_003	Wendy Charles-Warner.pdf	22/11/2013
DEADLINE 5: 12/12/13		
Responses to the ExA's 2nd questions		

Doc Ref	Doc Name	Date Received/Sent
RQ_2_001	Response to ExA's second questions Denbighshire and Conwy Council 10018810/10018899	12/12/2013
RQ_2_002	Response to ExA's second questions Ian Gardner 10018820	12/12/2013
RQ_2_003	Response to ExA's second questions Ian Sims and others 10017582	12/12/2013
RQ_2_004	Response to ExA's second questions Ifor Jones CLOC-S57022	12/12/2013
RQ_2_005	Response to ExA's second questions Michael Williams 10017315	12/12/2013
RQ_2_006	Response to ExA's second questions Natural Resources Wales 10018945.msg	12/12/2013
RQ_2_007	Response to ExA's second questions Peter Cobbold 10017622	12/12/2013
RQ_2_008	Response to ExA's second questions Public Health England 10018958	12/12/2013
RQ_2_009	Response to ExA's second questions RWE npower renewables CLOC-AP001	12/12/2013
RQ_2_010	Response to ExA's second questions Sheila Harman 10018790	12/12/2013
RQ_2_011	Response to ExA's second questions WRA Shuttleworth obo P V Naylor-Leyland 10017606	12/12/2013
Comments on the proposed DCO changes		
CPDCO_001	Comments on proposed amendments to the draft DCO MEAG MUNICH ERGO CLOC-AP003	12/12/2013
Applicant's response to late submissions		
RLS_1_001	Applicant's response to late submissions RWE npower renewables CLOC-AP001	12/12/2013
Comments on the applicant's assessment of impact on tranquillity		
CAIoT_001	LATE SUBMISSION Comments on Tranquility Assessment Report DCC and CCBC	09/01/2014 (late)
CAIoT_002	LATE SUBMISSION Comments on Tranquility Assessment Report John Smith	21/01/2014 (late)
Core Reference Documents (cont.)		
CRD_015	RWE npower renewables updated list of reference documents	12/12/2013
CRD_016	RWE NPower Renewables - Core Reference	12/12/2013

Doc Ref	Doc Name	Date Received/Sent
	<u>Documents</u>	
DEADLINE 6: 09/01/14		
Comments on responses to ExA's 2nd questions		
CRQ_2_001	<u>CoR2Q_1 RWE Npower Renewables</u>	09/01/2014
CRQ_2_002	<u>CoR2Q_2 Ian Rogers on behalf of Clocaenog Community Council</u>	09/01/2014
CRQ_2_003	<u>CoR2Q_3 Natural Resources Wales</u>	09/01/2014
CRQ_2_004	<u>CoR2Q_4 Ian Gardner</u>	09/01/2014
CRQ_2_005	<u>CoR2Q_5 Sheila Harman</u>	09/01/2014
Comments on the RIES		
CRIES_001	<u>Comments on the RIES - RWE_025</u>	09/01/2014
CRIES_002	<u>CoR2Q_3 Natural Resources Wales</u>	09/01/2014
Responses to Late Submissions		
RLS_2_001	<u>Applicant's response to written representations submitted by Interested Parties for the Examining Authority's 12 December 2013 deadline</u>	09/01/2014
Core Reference Documents (cont.)		
CRD_017	<u>RWE NPower Renewables - Core Reference Documents</u>	09/01/2014
DEADLINE 7: 13/02/14		
Written summaries of cases put orally (cont.)		
Issue Specific Hearing on Policy – 21/01/2014		
WSC_003	<u>Oral summary Cllr. Janet Rogers</u>	13/02/2014
WSC_004	<u>Oral summary Denbighshire and Conwy Council</u>	13/02/2014
WSC_005	<u>Oral summary Michael Williams</u>	13/02/2014
WSC_006	<u>Oral summary RWE</u>	13/02/2014
WSC_007	<u>Oral summary Sheila Harman</u>	13/02/2014
Issue Specific Hearing on the Environment – 22/01/2014		
WSC_008	<u>Oral summary Ian Sims</u>	13/02/2014
WSC_009	<u>Oral Summary Michael Williams</u>	13/02/2014

Doc Ref	Doc Name	Date Received/Sent
WSC_010	Oral summary Sheila Harman	13/02/2014
Issue Specific Hearing on the Environment continued – 23/01/2014		
WSC_011	Oral Summary - Ian Gardner	13/02/2014
WSC_012	Oral Summary - Michael Williams	13/02/2014
WSC_013	Oral Summary - Sheila Harman	13/02/2014
Open Floor Hearing – 28/01/2014 – 2pm		
WSC_014	Oral summary - John Hopkinson	13/02/2014
WSC_015	Oral summary - Mark Isherwood	13/02/2014
WSC_016	Oral summary - RP Tilby obo Brynbach Ltd	13/02/2014
WSC_017	Oral summary - WRA Shuttleworth obo PV Naylor-Leyland	13/02/2014
WSC_018	Oral summary John Edwards	13/02/2014
WSC_019	Oral summary Peter Welford	13/02/2014
WSC_020	Oral summary Sheila Harman	13/02/2014
Open Floor Hearing – 28/01/2014 – 6.30pm		
WSC_021	Oral summary Cllr Rogers Clocaenog Community Council	13/02/2014
Issue Specific Hearing on Mitigation and Requirements – 29/01/2014		
WSC_022	Oral summary RWE	13/02/2014
Open Floor Hearing – 30/01/2014 – 10am		
WSC_023	Oral summary - Jane McCormack	13/02/2014
WSC_024	Oral summary Ian Gardner	13/02/2014
WSC_025	Oral summary John Hopkinson	13/02/2014
WSC_026	Oral summary Michael Williams	13/02/2014
WSC_027	Oral summary Richard Welch	13/02/2014
WSC_028	Oral summary Sheila Harman	13/02/2014
Written Summaries of Case (non-specified or multiple hearings)		

Doc Ref	Doc Name	Date Received/Sent
WSC_029	Oral summary - Dafydd Jones	13/02/2014
WSC_030	Oral summary - Michael Skuse	13/02/2014
WSC_031	Oral summary (DCO & CA) RWE	13/02/2014
WSC_032	Oral summary (ENV) Denbighshire and Conwy Council	13/02/2014
WSC_033	Oral summary (ENV) RWE	13/02/2014
WSC_034	Oral summary (OFHs) RWE	13/02/2014
WSC_035	Oral summary Bryan Wilcox	13/02/2014
WSC_036	Oral summary Natural Resources Wales	13/02/2014
WSC_037	Oral summary Oral summary (MIT & DCO) Denbighshire and Conwy Council	13/02/2014
Applicant's Final Draft DCO and Requirements		
FdDCO_001	RWE nPower Renewables - final draft DCO	13/02/2014
FdDCO_002	LATE SUBMISSION RWE nPower Renewables (corrected version)	19/02/2014 (late)
Responses to Late and Additional Submissions		
RLS_3_001	Response to late additional submissions Sheila Harman	13/02/2014
DEADLINE 8: 20/02/2014		
Comments on Applicant's Final Draft DCO and Requirements		
CFdDCO_001	Comments on DCO - Denbighshire & Conwy Councils	20/02/2014
CFdDCO_002	Comments on DCO - Michael Skuse	20/02/2014
CFdDCO_003	Comments on DCO - Michael Williams	20/02/2014
CFdDCO_004	Comments on DCO - Peter Cobbold	20/02/2014
CFdDCO_005	Comments on DCO - Sheila Harman	20/02/2014
CFdDCO_006	Joint submission for 20 Feb - NRW	20/02/2014
Responses to Written Summaries of Cases put Orally		
RWSC_001	Response to written summary of case - Bryan Wilcox	20/02/2014
RWSC_002	Response to written summary of case - John Hopkinson	20/02/2014
RWSC_003	Response to written summary of case - Richard Welch	20/02/2014
RWSC_004	Response to written summary of case - RWE npower renewables	20/02/2014
RWSC_005	Response to written summary of case -	20/02/2014

Doc Ref	Doc Name	Date Received/Sent
	<u>Sheila Harman</u>	
RWSC_006	<u>Joint submission for 20 Feb - NRW</u>	20/02/2014
DEADLINE 9: 25/02/2014		
Comments on Applicant's Corrected Final Draft DCO		
CCdDCO_001	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - David Heath</u>	25/02/2014
CCdDCO_002	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - David Insall</u>	25/02/2014
CCdDCO_003	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - Ian Gardner</u>	25/02/2014
CCdDCO_004	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - John Hopkinson</u>	25/02/2014
CCdDCO_005	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - Peter Cobbold</u>	25/02/2014
CCdDCO_006	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - Ian Rogers</u>	25/02/2014
CCdDCO_007	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - Michael Williams</u>	25/02/2014
CCdDCO_008	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - RP Tilby on behalf of Brynbach Ltd</u>	25/02/2014
CCdDCO_009	<u>Comments on applicant's corrected final DCO dated 19 February 2014 - Sheila Harman</u>	25/02/2014
DEADLINE 10: 26/02/2014		
Responses to the ExA's Rule 17 Letter Dated 21/02/2014		
RR17_2_001	<u>Response to the ExA's Rule 17 and 8(3) letter dated 21 February 2014 - MEAG</u>	26/02/2014
RR17_2_001	<u>Response to the ExA's Rule 17 and 8(3) letter dated 21 February 2014 - RWE npower renewables</u>	26/02/2014
RR17_2_001	<u>Response to the ExA's Rule 17 and 8(3) letter dated 21 February 2014 - Sheila Harman</u>	26/02/2014
DEADLINE 11: 27/02/2014		
Responses to the ExA's Rule 17 Letter Dated 19/02/2014		
RR17_3_001	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Bryan Wilcox</u>	27/02/2014
RR17_3_002	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Cllr Janet</u>	27/02/2014

Doc Ref	Doc Name	Date Received/Sent
	<u>Rogers on behalf of Clocaenog Community Council</u>	
RR17_3_003	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - David and Julie Heath</u>	27/02/2014
RR17_3_004	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - David Insall</u>	27/02/2014
RR17_3_005	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Denbighshire and Conwy Councils</u>	27/02/2014
RR17_3_006	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Ian Gardner</u>	27/02/2014
RR17_3_007	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Ian Rogers</u>	27/02/2014
RR17_3_008	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - John Hopkinson</u>	27/02/2014
RR17_3_009	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Len Harrison</u>	27/02/2014
RR17_3_010	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Michael Williams</u>	27/02/2014
RR17_3_011	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Peter Cobbold</u>	27/02/2014
RR17_3_012	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - RP Tilby and JM Tilby on behalf of Brynbach Ltd</u>	27/02/2014
RR17_3_013	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - RWE npower renewables</u>	27/02/2014
RR17_3_014	<u>Response to the ExA's Rule 17 and 8(3) letter dated 19 February 2014 - Sheila Harman</u>	27/02/2014
DEADLINE 12: 06/03/2014		
Comments on ExA's Draft DCO		
CExADCO_001	<u>Comments on ExA's draft DCO - Ian Gardner</u>	06/03/2014
CExADCO_002	<u>Comments on ExA's draft DCO - John Hopkinson</u>	06/03/2014
CExADCO_003	<u>Comments on ExA's draft DCO - RWE npower renewables</u>	06/03/2014
CExADCO_004	<u>Comments on ExA's draft DCO - RWE npower renewables</u>	06/03/2014
CExADCO_005	<u>Comments on ExA's draft DCO - MEAG MUNICH ERGO</u>	06/03/2014
CExADCO_006	<u>Comments on ExA's draft DCO - Denbighshire County Council and Conwy County Borough Council</u>	06/03/2014

Doc Ref	Doc Name	Date Received/Sent
CExADCO_007	<u>Comments on ExA's draft DCO - Michael Williams</u>	06/03/2014
CExADCO_008	<u>Comments on ExA's draft DCO - Natural Resources Wales</u>	06/03/2014
CExADCO_009	<u>Comments on ExA's draft DCO - RP Tilby and JM Tilby on behalf of Brynbach Ltd</u>	06/03/2014
CExADCO_010	<u>Comments on ExA's draft DCO - Michael Skuse</u>	06/03/2014
CExADCO_011	<u>Comments on ExA's draft DCO - Peter Cobbold</u>	06/03/2014
CExADCO_012	<u>Comments on ExA's draft DCO - Sheila Harman</u>	06/03/2014
CExADCO_013	<u>Comments on ExA's draft DCO - David Insall</u>	06/03/2014
Other Documents (cont.)		
OD_010	<u>Completed section 106 agreement between RWE Innogy UK Limited, the Welsh Ministers, Denbighshire County Council and Conwy County Borough Council</u>	11/03/2014

APPENDIX B - EVENTS IN THE EXAMINATION

The Table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
12 September 2013	Preliminary Meeting and start of examination
23 September 2013	Notification by the ExA of procedural decision under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) made at and following the preliminary meeting. Including Issue of: <ul style="list-style-type: none">- Confirmation of the examination timetable- ExA's first written questions- Confirmation of request for Statements of Common Ground (SoCG)- Confirmation of intention to carry out inspection of the site in the company of interested parties
3 October 2013	Deadline for receipt by the ExA of: <ul style="list-style-type: none">- Notification of wish to attend the ExA's inspection of the site in the company of interested parties
15 October 2013	Variation to the timetable under Rule 8 (3) and notification of hearing under Rule 13 of the EPR
21 October 2013	Deadline for receipt by the ExA of: <ul style="list-style-type: none">- Responses to ExA's first written questions- Comments on Relevant Representations (RRs)- Summaries of RRs exceeding 1500 words- Written Representations (WRs) by all interested parties- Summaries of all WRs exceeding 1500 words- Schedule of mitigation works with associated Development Consent Order (DCO) Requirement- Statements of Common Ground (apart from SoCG on DCO Requirements)- Local Impact Reports (LIR) from local

	<p>authorities</p> <ul style="list-style-type: none"> - Notification by affected persons of wish for a Compulsory Acquisition Hearing to be held
22 October 2013	Notification of itinerary for Accompanied Site Visit
29 October 2013	Agenda for first Issue Specific Hearing on DCO published
30 October 2013	Accompanied Site Visit
31 October 2013	Accompanied Site Visit
1 November 2013	Accompanied Site Visit
7 November 2013	First Issue Specific Hearing on Development Consent Order at Denbigh Town Hall, Crown Lane at 9:30
11 November 2013	Notification of variation to the timetable under Rule 8 (3), notification of Accompanied Site Inspection under Rule 16, and a request for further information from the applicant under Rule 17 of the EPR
14 November 2013	<p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> - SoCG on DCO Requirements - Comments on WRs and responses to comments on RRs - Comments on the LIRs - Comments on response to ExA's first written questions - Comments on SoCG - Written summaries of cases put orally at first DCO hearing - The correction of errata or typographical errors within the DCO and Explanatory Memorandum (EM), and any proposed amendments to the draft DCO - Submission by the Applicant of assessment of impact on tranquillity
15 November 2013	Deadline for receipt by the ExA of the Applicant's response to the rule 17 letter dated 11 November 2013 regarding the draft Accompanied Site Inspection itinerary

21 November 2013	Issue by ExA of second set of written questions
22 November 2013	Deadline for receipt by the ExA of any interested party comments on the Applicant's response to the rule 17 letter dated 11 November 2013 regarding the draft Accompanied Site Inspection itinerary
26 November 2013	The Accompanied Site Visit itinerary published
28 November 2013	Accompanied Site Visit
2 December 2013	Deadline for notification by interested parties of wish to make oral representations at Open Floor or any Issue Specific Hearings
12 December 2013	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> - Response to ExA's second set of written questions - Comments on proposed amendments to the draft DCO - Comments on the Applicant's assessment of impact on tranquillity - Applicant's response to late submissions The Report on the Implications for European Sites (RIES) was issued by the ExA
13 December 2013	Notification of variation to timetable under Rule 8 (3), notification of hearings under Rule 13 of the EPR and notification of issue of the ExA's RIES for consultation
9 January 2014	Deadline for receipt by ExA of: <ul style="list-style-type: none"> - Comments on responses to second set of written questions - Comments on responses to Applicant's assessment of impact on tranquillity - Comments on the RIES - Notification by attendees of the time and date of which open floor hearing session they wish to attend and/or make oral representations at - Comments on the Applicant's response to late submissions - Applicant's and all other interested parties' responses to all late submissions

14 January 2014	Issue of updated agenda for Issue Specific Hearing on Environment Issue of updated agenda for Issue Specific Hearing on Policy
20 January 2014	Issue of agenda for second Issue Specific Hearing on DCO Issue of agenda for Issue Specific Hearing on Mitigation and Requirements
21 January 2014	Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR
21 January 2014	Issue Specific Hearing on Policy at Denbigh Town Hall, Crown Lane at 14:00
22 January 2014	Issue Specific Hearing on the Environment at Denbigh Town Hall, Crown Lane at 10:00
23 January 2014	Issue Specific Hearing on the Environment continued at Denbigh Town Hall, Crown Lane at 10:00
28 January 2014	Open Floor Hearing at Canolfan Cae Cymro Community Centre, Clawddnewydd at 14:00
28 January 2014	Open Floor Hearing at Canolfan Cae Cymro Community Centre, Clawddnewydd at 18:30
29 January 2014	Issue Specific Hearing on Mitigation and Requirements at Denbigh Town Hall, Crown Lane at 10:00
29 January 2014	Second Issue Specific Hearing on Development Consent Order at Denbigh Town Hall, Crown Lane at 14:00
29 January 2014	Compulsory Acquisition Hearing at Denbigh Town Hall, Crown Lane at 16:30
30 January 2014	Open Floor Hearing at Denbigh Town Hall, Crown Lane at 10:00
7 February 2014	Notification of variation to the timetable under Rule 8 (3), and a request for

further information under Rule 17 of the EPR

13 February 2014

Deadline for receipt by the ExA of:

- Applicant's final draft DCO and requirements and completed S106 undertakings
- Written summaries of cases put orally at all hearings in January 2014
- Responses to all late and additional submissions

19 February 2014

Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR

20 February 2014

Deadline for receipt by the ExA of:

- Comments on applicant's final draft DCO and requirements
- Comments on responses to all late and additional submissions
- Responses to written summaries of cases put orally at hearings in January 2014

Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR

21 February 2014

Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR

25 February 2014

Deadline for receipt by the ExA of:

- Response from the applicant and MEAG to the ExA's Rule 17 and 8(3) letter dated 21 February 2014

26 February 2014

Deadline for receipt by the ExA of:

- Response from the applicant and MEAG to the ExA's Rule 17 and 8(3) letter dated 21 February 2014

27 February 2014

Deadline for receipt by the ExA of views on the potential for the adoption of a requirement in the draft DCO to address any future issue which may arise as a result of amplitude modulation (as per the

Examining Authority's letter dated 19 February 2014)

28 February 2014

Issue of ExA's draft DCO and request for comments under Rule 17 of the EPR

6 March 2014

Deadline for receipt by the ExA of:

- Comments on ExA's draft DCO
- Responses to views on the potential for the adoption of a requirement in the draft DCO to address any future issue which may arise as a result of amplitude modulation (as per the Examining Authority's letter dated 19 February 2014)

12 March 2014

Close of examination

APPENDIX C - LIST OF ABBREVIATIONS

AIL	Abnormal Indivisible Loads
AM	Amplitude Modulation
AMP	Access Management Plan
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
ASIDOHL	Assessment of the Significance of Impacts of Development on Historic Landscape
BHS	British Horse Society
CA	Compulsory Acquisition
CCBC	Conwy County Borough Council
CCTV	Closed-circuit television
CCW	Countryside Council for Wales
CEMP	Construction Environment Management Plan
CFWF	Clocaenog Forest Wind Farm
CF	Clocaenog Forest
CLDP	Conwy Local Development Plan
CMS	Construction Method Statement
CPAT	Clwyd Powys Archaeological Trust
CPRW	Campaign for the Protection of Rural Wales
CTMP	Construction Traffic Management Plan
dB(A)	'A' weighted decibel
dbLA90	The background 'A' weighted noise level exceeded for 90% of the time
DCC	Denbighshire County Council
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DLDP	Denbighshire Local Development Plan
EART	Environmental Assessment of Road Traffic
EAW	Environment Agency Wales
EHO	Environmental Health Officers
EIA	Environmental Impact Assessment
EPS	European Protected Species

ERP	Emergency Response Plan
ES	Environmental Statement
ExA	Examining Authority
FCA	Flood Consequences Assessment
FCW	Forestry Commission Wales
FDP	Forest Design Plan
GW	Gigawatt
ha	Hectare
HGV	Heavy Goods Vehicle
HLCA	Historic Landscape Character Area
HMP	Habitats Management Plan
HRA	Habitats Regulation Assessment
ICNIRP	International Commission on Non-Ionizing Radiation Protection
ICOMOS UK	International Council on Monuments & Sites UK
IEA	Institute of Environmental Assessment
IEEM	Institute of Ecology and Environmental Management
IoA	Institute of Acoustics
IOA GPG	Institute of Acoustics Good Practice Guidance
IP	Interested Party
IPDR	Infrastructure Planning (Decisions) Regulations 2010
km	Kilometre
KWh/dp	Kilowatt hours per day per person
KWh	Kilowatt hour
LAeq	'A' weighted equivalent sound pressure level in dB
LDP	Local Development Plan
LIR	Local Impact Report
LPA	Local Planning Authority
LSE	London School of Economics
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
m	Metres
m/s	Metres per second
MW	Mega Watts

Nos	Numbers
NPS	National Policy Statement
NRW	Natural Resources Wales
NSD	National Services Directorate
NSIP	Nationally Significant Infrastructure Project
NWTRA	North Wales Trunk Road Agency
OD	Operations Directorates
Order	Development Consent Order
PA2008	Planning Act 2008
PHE	Public Health England
PM	Preliminary Meeting
PPW	Planning Policy Wales
PRoW	Public Rights of Way
PWS	Private Water Supply
'R'	Requirement of a Development Consent Order
ReUK	Renewable UK
RIES	Report on the Implications for European Sites
RWE NRL	RWE Npower Renewables Limited
's'	Section of the Planning Act 2008
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SEA	Strategic Environmental Assessment
sm	Square metres
SNPA	Snowdonia National Park Authority
SNP	Snowdonia National Park
SoCG	Statement of Common Ground
SoS	Secretary of State
SPAs	Special Protection Areas
SPMP	Soil and Peat Management Plan
SPP	Species Protection Plan
SSA	Strategic Search Area
SSSI	Site of Special Scientific Interest
sTMP	Strategic Traffic Management Plan
SuDS	Sustainable Drainage Systems

SWMP	Surface Water Management Plan
TAN	Technical Advice Note
TMFG	Tir Mostyn and Foel Goch wind farm
TMFGL	Tir Mostyn and Foel Goch Limited
TWH	Terrawatt-hour
UK	United Kingdom
UKFS	UK Forestry Standard
WG	Welsh Government
WHS	World Heritage Sites
WMP	Waste Management Plan
ZTV	Zone of Theoretical Visibility

APPENDIX D - RECOMMENDED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

201[X] No. []

INFRASTRUCTURE PLANNING

The Clocaenog Forest Wind Farm Order 201[X]

<i>Made</i>	- - - -	201[X]
<i>Laid before Parliament</i>		201[X]
<i>Coming into force</i>	- -	201[X]

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PART 1

Preliminary

Citation and Commencement

1. This Order may be cited as the Clocaenog Forest Wind Farm Order 201[X] and shall come into force on [●] 201[X].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1984 Act” means the Road Traffic Regulation Act 1984(d)

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2008 Act” means the Planning Act 2008(g);

“access plan” means plan reference CF/PLAN04/ACCESS/01-07 certified as the access and public rights of way plan by the Secretary of State for the purposes of this Order;

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

-
- (a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.7 1), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1984 c.27.
- (e) 1990 c.8. Section 206(0) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (g) 2008 c.29.

“authorised development” means the development described in Part 1 of Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference v2 submitted in November 2013 certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order and submitted with the application;

“highway” has the same meaning as in the 1980 Act;

“the land plan” means the plan reference CF/PLAN01/LAND/01-07 certified as the land plan by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 6 (power to deviate);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement and “maintenance” shall be construed accordingly;

“Order land” means the land shown on the land plan as—

- (a) land required for or affected by the authorised development;
- (b) land subject to the interference with private rights; and
- (c) land subject to the creation of new rights;

“Order limits” means the order limits shown on the works plan;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirement” means a requirement set out in Part 3 of Schedule 1 (requirements);

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means RWE Innogy UK Limited (company number 2550622) whose registered office is at Auckland House, Lydiard Fields, Great Western Way, Swindon, Wiltshire SN5 8ZT;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“the works plan” means the plan reference CF/PLAN02/WORKS/01-07 certified as the works plan by the Secretary of State for the purposes of this Order and references in this Order to Work Nos. shall be a reference to the works described in Schedule 1 (authorised project) and shown on the works plan.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All areas distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work.

(4) References in this Order to a numbered work are references to a work number in Part 1 of Schedule 1 (authorised project).

PART 2

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Part 3 of Schedule 1 (requirements) to this Order the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate) the authorised development may only be constructed in the lines or situations shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan but without prejudice to the provisions of article 6 (power to deviate) the undertaker may construct—

- (a) Work Nos. 2A, 5A and 14A or Work Nos. 2B, 5B and 14B but shall not construct both Work Nos. 2A, 5A and 14A and Work Nos. 2B, 5B and 14B under the powers conferred by this Order; and
- (b) Work No. 4A or 4B but shall not construct more than one of those works under the powers conferred by this Order.

Procedure in relation to approvals etc under requirements

4.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a relevant planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a relevant planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a relevant planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Maintenance of authorised project

5. The undertaker may at any time and from time to time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Power to deviate

6.—(1) In constructing or maintaining the authorised development comprising works numbered 1 to 14B in Schedule 1 (authorised works), the undertaker may deviate laterally from the lines or situations shown on the works plan to the extent of the limits of deviation shown on that plan.

(2) Without prejudice to paragraph (1), in constructing and maintaining Work No. 2A or 2B the undertaker may deviate from the commencement and termination points specified for each of the cable routes referred to in the first column of the Tables comprised within the description of those Works and may within the limits of deviation construct and maintain those cable routes between the commencement and termination points so shown in the Tables.

Operation of generating station subject to requirement to obtain licence

7.—(1) The undertaker is hereby authorised to operate and use the authorised development for generating electricity.

(2) This article does not relieve the undertaker of any obligation to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of a generating station.

Benefit of Order

8.—(1) Subject to paragraph (2), the provisions of this Order conferring powers on the undertaker shall have effect solely for the benefit of the undertaker.

(2) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), shall include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the condition set out in paragraph (2) has been satisfied.

(2) The condition to be satisfied for the purposes of paragraph (1) is that the defendant shows that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(a).

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(4) The application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of law having similar effect) shall not extend to confer upon the undertaker the protection afforded by section 158 of the 2008 Act in respect of any nuisance arising from noise attributable to the use of the authorised project.

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (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) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), and (c).

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 30 (apparatus etc. of statutory undertakers in stopped-up streets).

(5) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Application of the 1991 Act

12.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) and the carrying out of streets works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route);
- section 82 (liability for damage or loss caused) and

all other such provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Public rights of way

13.—(1) With effect from the closure of the footpath described in columns (1) and (2) of Schedule 3 (streets to be stopped up) to this Order all public rights of way over the section of footpath shall be extinguished and public rights of way over the section of footpath described in column (4) of Schedule 3 (streets to be stopped up) to this Order shall be created.

(2) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) that street authority shall be deemed to have granted consent.

(7) This article does not relieve the undertaker from any obligation to obtain an order under sections 1,9,14, and 15 to the 1984 Act in respect of any streets for which the Denbighshire County Council or Conwy County Borough Council is the highway authority.

Access to works

15.—(1) The undertaker may, for the purposes of the construction or maintenance of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) at or about the points marked “X” on the works plan;
- (b) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project; and
- (c) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, strengthen, improve, repair or reconstruct any street under the powers conferred by this Order.

(2) If a relevant planning authority which receives an application for approval under paragraph (1)(b) or (c) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.

Construction and maintenance of new or altered streets

16.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) 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 shall be 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.

(4) For the purposes of a defence under paragraph (3), the court shall in particular have regard to the following matters—

- (a) the character of the street and 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 reasonably 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;
- (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 to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(5) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Agreements with street authorities

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

- (a) the construction of any new street authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(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.

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010^(b).

(8) If a person who receives an application or consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (3) or approval under paragraph (4)(a) that person shall be deemed to have granted consent or given approval, as the case may be.

(9) This article does not relieve the undertaker of any requirement to obtain from the Natural Resources Wales any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

(10) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964^(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (4)(a) or (4)(b), as the case may be, that authority shall be deemed to have granted consent.

PART 3

Powers of acquisition

Compulsory acquisition of land and rights

20. Subject to article 23 (compulsory acquisition of rights) and article 33 (Crown rights) the undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

Time limit for exercise of authority to acquire land compulsorily

21. After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981(a)).

Application and modification of legislative provisions

22.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the Acquisition of Land Act 1981(a)(minerals) are incorporated in this Order as if this Order were a

(a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

compulsory purchase order made under Part 1 of that Act for the purposes of Schedule 2 to the 1981 Act—

- (a) Parts 1, 2 and 3 of Schedule 2 and shall apply to the Order land;
- (2) The modifications are—
 - (a) paragraph 8(3) is not incorporated;
 - (b) for “the acquiring authority” substitute “the undertaker”; and
 - (c) in paragraph 1(1) after “compulsory purchase order” insert “or a development consent order.
- (3) In this article “mines” has the same meaning as in paragraph 1 of Part 1 of Schedule 2 to the Acquisition of Land Act 1981.

Compulsory acquisition of rights

- 23.**—(1) The undertaker may acquire compulsorily such rights over the Order land specified in column (1) of Part 1 of Schedule 6 (Land subject to acquisition of new rights and interference with private rights), by creating them. The undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of Part 1 of that Schedule.
- (2) The undertaker may interfere with such private rights as specified in column (2) of Part 2 of the Schedule in relation to the land specified in column (1) of Part 2 of that Schedule.
- (3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the undertaker acquires a right over the Order land under paragraph (1) the undertaker shall not be required to acquire a greater interest in that land.
- (4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over the Order land by the creation of a new right.

Private rights

- 24.**—(1) From the date of entry by the undertaker onto any part of the Order land for the purposes of exercising any power under the Order, all private rights over the Order land shall be subject to the provisions of this article.
- (2) All private rights over land of which the undertaker takes temporary possession for construction purposes are suspended and unenforceable for so long as the undertaker remains in occupation of that land.
- (3) Any person who suffers loss by the suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc) applies.
- (5) Paragraph (2) shall have effect subject to—
- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the Order land or the acquisition of rights over or affecting the Order land,
 - (ii) the undertaker’s taking temporary possession of it,

(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

- that any or all of those paragraphs shall not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (5)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) Reference in this article 24 to private rights over land means the private rights specified in column (2) of Part 2 of Schedule 6 to this Order in relation to the lands numbered 2, 3, 4, 5, 6, 7 and 8 on the land plan and includes references to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981^(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

(4) “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”

(5) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(6) In that section, for subsections (5) and (6) there shall be substituted—

(7) “(5) For the purposes of this section, a person has a relevant interest in land if—

(8)(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(9)(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(10) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(11) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(12)References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

PART 4

Miscellaneous and general

Application of landlord and tenant law

26.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

27. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

28.—(1) The undertaker may fell or lop any tree or shrub within or encroaching upon the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The exercise of any power under paragraph (1) shall be exercised with the consent of the owner of the land concerned.

Statutory undertakers

29.—(1) The undertaker may for the purposes of article 10 (street works)—

- (a) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets; and
- (b) acquire compulsorily a right over the relevant streets.

(2) In this article “relevant streets” means the streets described in column (1) of Part 1 of Schedule 6 to this Order.

Apparatus and rights of statutory undertakers in stopped-up streets

30.—(1) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment

of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003^(a).

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Removal of human remains

32.—(1) In this article “the specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
 - (b) displaying a notice in a conspicuous place on or near to the specified land.
- (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to Denbighshire County Council and Conwy County Borough Council.
- (5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.
- (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
 - (b) removed to, and cremated in, any crematorium,

and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker shall comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to Denbighshire County Council and Conwy County Borough Council mentioned in paragraph (4).
- (12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.
- (13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Crown rights

33.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of her Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of her Crown and not forming part of the Crown Estate without the consent in writing of the Government Department having the management of that land; or
 - (iii) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department without the consent in writing of that Government Department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Service of Notices

34.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice

^(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

^(b) 1978 c.30.

or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the obligation shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Protection of interests

35. Schedule 8 (protection of electricity, gas, water and sewerage undertakers to this Order) shall have effect.

Certification of plans etc

36.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) access plan;

- (d) the works plan; and
- (e) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

37. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

SCHEDULES

SCHEDULE 1

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

In the County of Denbighshire and in the County Borough of Conwy—

A wind energy electricity generating station with an installed capacity of between 64 and 96MW comprising a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act consisting of-

Work No.1 - up to 32 wind turbines each sited on concrete foundations incorporating hardstanding for cranes, each turbine being fitted with rotating blades and having a height to blade tip of up to 145 metres and including external transformers located at the base of the turbine. The wind turbines comprising Work No. 1 will be situated at the following locations—

Wind Turbine Number	Grid Reference	
	Easting	Northing
WT 1	301118	358328
WT 2	301550	358106
WT 3	301063	357801
WT 4	300021	357651
WT 5	300510	357483
WT 6	301065	357256
WT 7	300449	357030
WT 8	301282	356957
WT 9	300057	356694
WT 10	301308	356533
WT 11	301151	356100
WT 12	300741	355620

WT 13	301320	355593
WT 14	300957	355275
WT 15	301512	355170
WT 16	301081	354833
WT 17	301599	354551
WT 18	301885	354174
WT 19	302153	353716
WT 20	301561	353647
WT 21	300770	353343
WT 22	301297	353291
WT 23	302358	353159
WT 24	300610	352531
WT 25	301716	352540
WT 26	301193	352528
WT 27	302724	352076
WT 28	300752	352025
WT 29	301198	351850
WT 30	301382	351501
WT 31	300880	350721
WT 32	301232	350505

Work No.2A – A series of electrical cables with a nominal voltage of 33 kilovolts together with a cable for the transmission of electronic communications buried beneath the surface of the ground along the general line of the tracks and roads comprised in Work No.3 and connecting the wind turbines comprising Work No.1 and the onsite electricity substation comprising Work No. 5A arranged in the following circuit routes—

Cable circuit route number	Commencement point	Termination point
1	Substation forming Work No.5A	WT1
	WT1	WT2
	WT2	WT3
	WT3	WT4
	WT4	WT5
	WT5	WT7
	WT7	WT9
2	Substation forming Work No.5A	WT6
	WT6	WT8
	WT8	WT10
	WT10	WT11
	WT11	WT12
	WT12	WT13
	WT13	WT14
3	Substation forming Work No.5A	WT15
	WT15	WT16
	WT16	WT17
	WT17	WT18
	WT18	WT20
	WT20	WT21
4	Substation forming Work	WT19

Cable circuit route number	Commencement point	Termination point
	No.5A	
	WT19	WT22
	WT22	WT23
	WT23	WT24
	WT24	WT26
	WT26	WT28
5	Substation forming Work No.5A	WT25
	WT25	WT27
	WT27	WT29
	WT29	WT30
	WT30	WT31
	WT31	WT32

Work No.2B – A series of electrical cables with a nominal voltage of 33 kilovolts together with a cable for the transmission of electronic communications buried beneath the surface of the ground along the general line of the tracks and roads comprised in Work No.3 and connecting the wind turbines comprising Work No.1 and the onsite electricity substation comprising Work No. 5B arranged in the following circuit routes—

Cable circuit route number	Commencement point	Termination point
1	Substation forming Work No.5B	WT24
	WT24	WT26
	WT26	WT28
	WT28	WT30
	WT30	WT31
	WT31	WT32
2	Substation forming Work No.5B	WT19
	WT19	WT22
	WT22	WT23
	WT23	WT25
	WT25	WT27
	WT27	WT29
3	Substation forming Work No.5B	WT15
	WT 15	WT16
	WT16	WT17
	WT17	WT18
	WT18	WT20
	WT20	WT21
4	Substation forming Work No.5B	WT6
	WT6	WT8
	WT8	WT10
	WT10	WT11
	WT11	WT12
	WT12	WT13
	WT13	WT14
5	Substation forming Work No.5B	WT1
	WT1	WT2
	WT2	WT3

	WT3	WT4
	WT4	WT5
	WT5	WT7
	WT7	WT9

Work No. 3 - A series of new tracks, existing tracks subject to improvement and widening and public roads subject to widening as described in the following tables—

New tracks

Access track No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
N1	301053	354912	301148	354923
N2	301732	353137	301759	353249
N7	300779	357705	301053	357760
N9	300551	354816	300680	354787
N12	301051	357035	301004	356965
N13	300997	356851	301005	356965
N14	301018	355995	301095	355964
N15	300780	355350	300896	355416
N18	301763	352551	301682	352621
N19	301187	352084	301232	351977
N20	300744	358780	300798	358668
N21	299761	357707	299720	357850
N22	300062	357628	299986	357686
N23	301289	352268	301345	352245
N24	301203	352481	301211	352434
N4	301260	351872	301521	351501

New spur tracks

Access track No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
S1	301062	358319	301118	358328
S2	301515	358109	301549	358107
S3	301063	357801	301069	357772
S4	300030	357651	300021	357651
S5	300740	357556	300509	357483
S6	301122	357097	301065	357256
S7	300529	356984	300449	357030
S8	301122	357097	301282	356957
S9	300069	356708	300057	356694
S10	301343	356415	301308	356533
S11	301151	356100	301108	355973
S12	300741	355620	300999	355802
S13	301084	355554	301320	355593
S14	300834	355306	300957	355275
S15	301438	355078	301511	355170
S16	301081	354834	301063	354899
S17	301554	354556	301599	354551

Access track No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
S18	301885	354174	301845	354063
S19	301875	353692	302153	353716
S20	301475	353692	301561	353647
S21	300739	353256	300770	353343
S22	301295	353259	301297	353291
S23	302199	353104	302358	353159
S24	300686	352482	300610	352531
S25	301716	352540	301717	352591
S26	301268	352594	301193	352528
S27	302263	351904	302723	352077
S28	300841	352162	300841	352161
S29	301235	351963	301198	351850
S30	301378	351623	301382	351501
S31	301678	350884	300880	350721
S32	301301	350647	301232	350505
SMM1	299997	356584	299893	356575
SMM2	300653	351909	300734	351823

Existing tracks subject to improvement and widening

Access track No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
E1	300890	358336	301051	358313
E2	301051	358313	301375	358861
E5	300649	357389	300023	357656
E6	300635	357032	301001	356966
E7	301001	356966	301122	357097
E8	300624	357064	300325	356915
E9	300330	356917	300224	356913
E10	300224	356913	299997	356584
E11	300781	355353	301103	355969
E12	301103	355970	301343	356415
E13	300570	355106	300609	354651
E14	300604	354689	300695	354798
E15	300695	354798	301053	354912
E16	301148	354922	301442	355081
E17	300609	354649	300728	354115
E18	300706	354150	301554	354556
E19	300729	354114	300659	353686
E20	300658	353686	300511	353164
E21	300510	353161	301845	354063
E22	300510	353161	300777	353046
E23	300775	353045	301194	353212
E24	301197	353212	301877	353693
E25	301196	353212	301707	353255
E26	301709	353255	301829	353240

Access track No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
E27	301833	353239	301908	353231
E28	301895	353232	302199	353104
E29	301731	353137	301309	352690
E30	301310	352692	300686	352482
E31	301311	352692	301191	352457
E32	301191	352456	301307	352227
E33	301191	352457	300653	351909
E34	301307	352227	301408	352268
E35	301408	352268	301552	352563
E36	301549	352557	301681	352621
E37	301849	352476	302224	352055
E38	302225	352055	302263	351904
E40	301307	352227	301187	352084
E41	301233	351978	301259	351861
E43	301521	351501	301693	351263
E46	301678	350885	301300	350648
E50	300997	356851	301018	355898
E51	301047	354916	301151	354924
E53	301053	357760	301515	358109
E54	301682	352621	301848	352477
E56	301678	350885	301693	351263
E57	300023	357656	299761	357707

Public roads subject to widening

Public road No	Commencement Point		Termination point	
	Easting	Northing	Easting	Northing
PR1	300744	358778	300624	357351
PR2	300624	357351	300634	357032
PR3	301085	355555	300571	355108
PR4 -NOT USED	-	-	-	-
PR5	302454	350166	301749	351092

In constructing Work No. 3 the undertaker may—

- (a) provide temporary passing places for construction vehicles at any location along the line of the work shown on the works plan within the limits of deviation for Work No. 3; and
- (b) construct culverts to carry any watercourse under Work No. 3 and extend or replace any existing culvert to carry such a watercourse.

Work No.4A – A widening of part of the of the unnamed public road shown as PR1 at X on Works Plan 1 to provide construction, maintenance and emergency site access commencing at Ordnance Survey National Grid Reference Point SJ0074458778.

Work No.4B – A widening of part of the of the unnamed public road shown as PR5 at X on Works Plan 7 to provide construction, maintenance and emergency site access commencing at Ordnance Survey National Grid Reference Point SJ0245550165.

Work No.5A - An onsite electricity substation comprising an enclosed area of hardstanding of 4080 square metres located at Ordnance Survey National Grid Reference Point SJ0136958813 and including a control building to house switch gear and control equipment.

Work No.5B - An onsite electricity substation comprising an enclosed area of hardstanding of 4080 square metres located at Ordnance Survey National Grid Reference Point SJ0215150472 and including a control building to house switch gear and control equipment.

Work No.6 - A meteorological mast for the purpose of monitoring and recording wind speed and direction as well as air temperature, having a height of 100 metres and sited on an area of hardstanding of 900 square metres and located at Ordnance Survey National Grid Reference Point SH9989356575. Work No.6 includes a cable for the transmission of electronic communications from wind turbine No.9 comprised in Work No.1 along the line of existing track No. E10 and new spur track No. SMM1 comprised in Work No.3.

Work No.7 - A meteorological mast for the purpose of monitoring and recording wind speed and direction as well as air temperature, having a height of 100 metres and sited on an area of hardstanding of 900 square metres and located at Ordnance Survey National Grid Reference Point SJ0073551823. Work No.7 includes a cable for the transmission of electronic communications along the line of existing track No.E33 from its junction with new spur track No. S28 and new spur track No. SMM2 comprised in Work No.3.

Work No.8 - A temporary civil construction compound comprising an enclosed area of hardstanding of 2500 square metres located at Ordnance Survey National Grid Reference Point SJ0095558354 and including a temporary office and staff welfare building together with an area for the storage of materials for use in the construction of the authorised development.

Work No.9 - A temporary civil construction compound comprising an enclosed area of hardstanding of 2500 square metres located at Ordnance Survey National Grid Reference Point SJ0178451133 and including a temporary office and staff welfare building together with an area for the storage of materials for use in the construction of the authorised development.

Work No.10 - A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of 39,200 square metres and a depth of up to 18 metres located at Ordnance Survey National Grid Reference Point SJ0189157562.

Work No.11 - A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 13,600 square metres and a depth of up to 16 metres located at Ordnance Survey National Grid Reference Point SJ0246654106.

Work No.12 - A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 18,300 square metres and a depth of up to 20 metres located at Ordnance Survey National Grid Reference Point SJ0185151493.

Work No.13 - A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 11,300 square metres and a depth of up to 19 metres located at Ordnance Survey National Grid Reference Point SJ0078050630.

Work No.14A – A temporary electrical compound comprising an enclosed area of hardstanding of 2500 square metres located adjacent to the onsite electricity substation forming Work No.5A at Ordnance Survey National Grid Reference Point SJ0131558784.

Work No.14B – A temporary electrical compound comprising an enclosed area of hardstanding of 2500 square metres located adjacent to the onsite electricity substation forming Work No.5B at Ordnance Survey National Grid Reference Point SJ0219750429.

In Work No.1, references to the locations of a wind turbine are references to the centre point of that turbine.

PART 2

ANCILLARY WORKS

Highway works

1. Landscaping and clearance of vegetation required in connection with Work No. 3

PART 3

REQUIREMENTS

Definitions

- 1.—(1) In this Part of this Schedule—

“abnormal indivisible load” has the same meaning as in the Road Vehicles (Authorisation of Special Types) (General) Order 2003;

“commencement”, in relation to the authorised development, means the date on which the authorised development begins by the carrying out of a material operation as defined in section 155 of the 2008 Act and “commence” and “commenced” shall be construed accordingly;

“ecological clerk of works” means a suitably qualified environmental professional or group of professionals

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order and submitted with the application;

“European protected species” means a species listed in Schedules 2 or 5 of the Conservation of Habitats and Species Regulations 2010;

“felling” means any felling or lopping undertaken pursuant to article 28 (felling or lopping of trees) of this Order;

“first export date” means the date the authorised development first exports electricity on a commercial basis

“Guidance Notes” means the guidance notes in Part 4 of this Schedule;

“NRW” means Natural Resources Wales or their successors to their statutory functions;

“site” means land within the Order limits;

“stakeholder group” means the representatives of organisations which will advise on the measures within the habitat management plan and the implementation of those measures

“TMFGL” means Tir Mostyn and Foel Goch Limited (reg no 5264934) or the owner from time to time of the Tir Mostyn and Foel Goch Wind Farm;

“Welsh devolved function” has the meaning given by section 36 of the Public Bodies Act 2011; and

“wind turbines” means the wind turbines forming part of Work No.1 and “wind turbine” shall be construed accordingly.

Submission and approval of details

2. Where under any Requirement details or a scheme or plan are to be submitted for the approval of the relevant planning authority then unless the Requirement provides otherwise—

- (a) those details or scheme or plan and that approval must be in writing;
- (b) the details, scheme or plan must be implemented as approved; and
- (c) the approved details, scheme or plan shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority, provided that no

amendments may be approved by the relevant planning authority where such amendments may give rise to any materially different environmental effects to those assessed in the environment statement and that where under any Requirement there is an obligation to consult with a third party prior to the submission of any details, scheme or plan for approval to the relevant planning authority then there shall be an obligation to consult with the same third party prior to the submission of any amendments to the approved details, scheme or plan to the relevant planning authority.

Time limits

3. The authorised development must be commenced within 5 years of the date of this Order.

Expiry of development consent

4.—(1) The development consent granted by this Order shall expire 25 years after the first export date.

(2) Confirmation of the first export date shall be provided by the undertaker to the relevant planning authority within one month of its occurrence.

Decommissioning and site restoration

5.—(1) Not less than 12 months before the expiry of the development consent granted by this Order, a decommissioning and site restoration scheme shall be submitted to the relevant planning authority for its approval.

(2) The decommissioning and site restoration scheme shall include provision for—

- (a) removal of all above-ground elements of the authorised development (with the exception of Work No.3, 4A and 4B);
- (b) removal of turbine bases and cabling to one metre below ground level; and
- (c) restoration of the disturbed areas.

(3) Decommissioning and restoration shall be completed in accordance with the approved decommissioning and site restoration scheme within the period set out in the approved scheme.

Failure of turbines

6. If any wind turbine fails to provide electricity to the grid for a continuous period of 12 months the undertaker shall—

- (a) notify the relevant planning authority within one month of the expiry of that 12 month period;
- (b) if so instructed by the relevant planning authority, submit to the relevant planning within 2 months of that instruction a detailed scheme setting out how the wind turbine and its associated ancillary equipment, including cabling (but excluding the turbine bases and cabling more than one metre below ground level) will be removed from the Order limits and how the disturbed areas will be restored; and
- (c) implement the approved scheme no later than 6 months from its approval unless a longer period is agreed in writing by the relevant planning authority.

Plans

7.—(1) Subject to the power to deviate set out in article 6 (power to deviate) of this Order and any other Requirement the authorised development shall be carried out in accordance with the plans or other documents certified in accordance with article 36 (certification of plans etc) of this Order.

(2) No wind turbine shall be constructed—

- (a) within 50m from the highest point of existing and new forest edge, when measured from the closest part of the rotor sweep of any wind turbine; and
 - (b) within 50m of any watercourse shown on Figure 8.1 of the environmental statement.
- (3) Subject to the requirements of paragraph (2), no other part of the authorised development with the exception of road widening and culverting shall be carried out within 30m of any watercourse shown on Figure 8.1 of the environmental statement unless shown on the plans or other documents certified in accordance with Article 36 of the Order or unless approved by the relevant planning authority.

Construction traffic management plan

8.—(1) No authorised development shall commence until following consultation with the Department of Transport of the Welsh Government and any relevant highway authorities a construction traffic management plan has been submitted to and approved by the relevant planning authority. The construction traffic management plan shall include—

- (a) construction vehicle routing plans;
- (b) site access plans;
- (c) details of the management of junctions to and crossings of the public highway and other public rights of way;
- (d) details of the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (e) details of escorts for abnormal indivisible loads;
- (f) details of temporary warning signs and banksman and escort details;
- (g) proposals for assessing the existing condition of affected highways;
- (h) details of any temporary or permanent improvements to the public highway;
- (i) details of the implementation and management of temporary passing places along the B4501 and the unnamed road into the Site;
- (j) details for the making good of any incidental damage to highways by construction traffic associated with the authorised project including street furniture, structures, drainage features, highway verge and carriageway surfaces; and
- (k) details of the maintenance of access to TMFG wind farm from the B4501 during the construction period of any works to the B4501 in connection with the authorised development together with details of the maintenance of access to clusters B and C of the TMFG wind farm along highways PR1 and PR2 shown on the access plan during the construction of the authorised development.

(2) The construction traffic management plan shall be implemented as approved.

(3) Before any wind turbine is removed or replaced a revised construction traffic management plan, dealing with that removal or replacement, shall be submitted to and approved by the relevant planning authority.

Construction method statement

9.—1 No authorised development shall commence until, following consultation with NRW, a construction method statement based on the principles set out in the Outline Construction Method Statement included as Annex 3.1 to the environmental statement including the following plans as appendices—

- (a) Construction Environmental Management Plan;
- (b) Waste Management Plan;
- (c) Emergency Response Plan;
- (d) Soil and Peat Management Plan;
- (e) Borrow Pit Design and Site Restoration Plan;

- (f) any relevant Species Protection Plans; and
- (g) Surface Water Management Plan,

has been submitted to and approved by the relevant planning authority.

(2) The construction method statement shall include details of—

- (a) roles and responsibilities and accountabilities for the multi-discipline team of engineering construction and environment staff;
- (b) mitigation measures to avoid harm to relevant protected species and minimise damage to relevant habitats;
- (c) the timing of construction works, including the timing of vegetation removal to avoid the potential for effects on protected species including reptiles and nesting birds;
- (d) the vehicle washing facilities, including siting if required to be undertaken on site;
- (e) the timing of works and methods of working for cable trenches, foundation works and erection of the wind turbines;
- (f) the timing of works and construction of the substation/control buildings and anemometry mast;
- (g) the cleaning of site accesses, site tracks and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
- (h) the pollution control and prevention measures including—
 - (i) sediment control measures,
 - (ii) measures for the bunding of fuel, oil and chemical storage areas,
 - (iii) sewage disposal measures,
 - (iv) measures for the protection of water courses and ground water and soils,
 - (v) a programme for monitoring private water supplies, water courses and water bodies before and during the authorised project, including details of the action to be taken if monitoring indicates adverse effects on private water supplies, water courses or water bodies;
- (i) the management of waste arisings;
- (j) the management of construction noise (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise);
- (k) a routing strategy to ensure that construction vehicles travel to/from the Application Site using the agreed routes;
- (l) the handling, storage and re-use on site of excavated top soil;
- (m) the handling, storage and management of any peat excavated;
- (n) the design and construction methods of Work Nos.3, and 4A or 4B, including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from tracks and disturbed areas including provision to ensure that no polluting discharge from those Work Nos. and disturbed areas enters any watercourse;
- (o) access track construction and widening including the nature, type and quantity of materials to be imported on site for backfilling operations or construction of access tracks;
- (p) the management of groundwater and surface water (including mitigation to protect water bodies, water courses and private water supplies);
- (q) the management of dust generation during excavations and soil handling;
- (r) the proposed location of temporary site compounds for storage of materials, machinery and parking within the sites clear of the highway, including the siting of the temporary buildings and all means of enclosure, oil/fuel and chemical storage and any proposals for

temporary lighting, and details of proposals for restoration of the sites of the temporary compounds and works within 12 months of the first export date;

- (s) the design and construction of any culverts upgrades or replacements;
- (t) the method of borrow pit working including means of extraction, handling, storage and re-use of soil, drainage control and restoration;
- (u) the protocols and programme for any required environmental monitoring to be made publicly available on an annual basis;
- (v) the restoration of the site which will be temporarily used for construction; and
- (w) the proposed communications protocol and the mechanism for investigating complaints, including the action to be taken where complaint investigations indicate materially adverse effects have occurred as a result of the construction of the authorised project.

(3) Before any wind turbine is removed or replaced a revised construction method statement, dealing with that removal or replacement, shall be submitted to and approved by the relevant planning authority. The construction method statement shall be implemented as approved.

(4) The construction method statement shall be implemented as approved.

Highways

10. No wind turbine parts shall be delivered to the site before detailed plans and drawings in respect of Work Nos. 4A or 4B (as required) have been submitted to and approved by the relevant planning authority and such works have been constructed in accordance with the plans and drawings so approved.

11. No authorised development shall commence until following consultation with the Department for Transport of the Welsh Government and any relevant highway authority details of temporary or permanent improvements to the public highway have been submitted to and approved by the relevant planning authority. The improvement works shall be implemented in accordance with the approved details.

12. No authorised development shall commence until following consultation with the Department for Transport of the Welsh Government and any relevant highway authority details of the reinstatement of the public highway and its associated street furniture following completion of the construction of the authorised development have been submitted to and approved by the relevant planning authority. The reinstatement works shall be implemented in accordance with the approved details.

Construction hours

13. The hours of work during the construction phase of the authorised development and any traffic movements into and out of the site associated with the construction or maintenance of the authorised development shall be 0700 to 1900 hours on Mondays to Fridays and 0700 to 1300 hours on Saturdays other than as allowed for under requirement 14. No work shall take place outside these hours, or on public holidays, unless otherwise previously agreed by the relevant planning authority.

14. Notwithstanding the provisions of requirement 13, delivery of turbine and delivery and assembly of crane components and other critical operations may take place outside the times specified in requirement 13 subject to first being approved by the relevant planning authority.

Habitat management plan

15.—(1) No authorised development shall commence until following consultation with NRW a detailed habitat management plan has been submitted to and approved by the relevant planning authority. The detailed habitat management plan will be based on the key objectives and principles set out in the outline habitat management plan included as Annex 9.10 to the environmental statement.

- (2)The habitat management plan shall include measures to—
- (a) establish and manage heathland habitat;
 - (b) restore and manage peatland habitat;
 - (c) establish and manage suitable habitat for dormice;
 - (d) contribute to grey squirrel control;
 - (e) establish and manage suitable habitat for black grouse and nightjar;
 - (f) monitor the effect of the authorised development and the effectiveness of habitat management upon bats, dormice, black grouse and heathland/peatland habitats. If, following consideration of monitoring results the relevant planning authority believes it is necessary to do so, management prescriptions included in the habitat management plan will be reviewed as necessary;
 - (g) monitor the effect of the authorised development upon nightjars. If, following consideration of monitoring results the relevant planning authority believes it is necessary to do so, implement the mitigation measures set out in the environmental statement. The measures shall include undertaking a study of nightjar churring against weather conditions prior to construction commencing to inform detailed mitigation proposals; and
 - (h) establish the membership, terms of reference and provisions for the management of the proposed stakeholder group.
- (3)The habitat management plan shall be implemented as approved.

Access management plan

16.—(1) No authorised development shall commence until following consultation with NRW an access management plan has been submitted to and approved by the relevant planning authority.

- (2)The access management plan shall include—
- (a) details of the temporary re-routing of public rights of way during construction of the authorised development;
 - (b) details of the permanent re-routing of FP19 prior to the operational phase;
 - (c) details of the provision of signage and other information alerting the public to construction works;
 - (d) details of any fencing or barriers to be provided during the construction period;
 - (e) details as to how public rights of way, paths and roads will be inspected prior to and monitored during the construction period;
 - (f) a commitment to return all public rights of way, paths and roads to the same condition as they were, or better, once the construction period has ceased;
 - (g) details as to how any paths found to be impassable during surveying will be cleared;
 - (h) details of temporary alternative routes for any public rights of way that need to be diverted;
 - (i) details of funds for improved signage/orientation;
 - (j) details as to the provision of a new way-marked route for the life of the development;
 - (k) details of a communications campaign linked with the end of the construction period;
 - (l) details of an active management plan for crossing points for public rights of way during the construction works; and
 - (m) details of permissive routes to be provided within the public access management areas during the construction phase.
- (3)The access management plan shall be implemented as approved by the relevant planning authority.

Felling

17.—(1) All felling shall be undertaken in accordance with the relevant guidance specified in paragraph (2) and NRW best practice (as amended from time to time).

(2) The relevant guidance is—

- (a) The UK Forestry Standard;
- (b) UKFS Guidelines – Forests & Water (2011);
- (c) UKFS Guidelines – Forests & Soil (2011);
- (d) UKFS Guidelines – Forests & Biodiversity (2011); and
- (e) UKFS Guidelines – Forests & Historic Environment (2011).

Appearance

18. The wind turbines shall not be erected until details of their external appearance and colour and surface finish and the design and appearance of the associated external transformer/switchgear units (if any) have been submitted to and approved by the relevant planning authority. The authorised development shall be completed in accordance with the approved details.

19. Notwithstanding any design or colour approved by the relevant planning authority pursuant to requirement 18, all wind turbines shall be of a 3 bladed configuration and shall be of a semi-matt finish.

20.—(1) No wind turbine shall display any name, sign, symbol or logo on any external surface unless such name, sign, symbol or logo has been previously approved in writing by the relevant planning authority.

(2) Paragraph (1) of this Requirement shall not apply to any name, sign, symbol or logo required by law or for health and safety reasons.

21. All wind turbines' blades shall rotate in the same direction. Without prejudice to Requirement 28 the wind turbines shall not be illuminated, save for a sensor-operated access light.

22. Before construction of Work No.5A or 5B, details of the external design, appearance and finish of the substation and any associated hard standing areas, and the electrical compound shall be submitted to and approved by the relevant planning authority. The authorised development shall be completed in accordance with the approved details.

Shadow flicker

23. The authorised development shall not commence until a scheme for the avoidance of any shadow flicker effect at any dwelling which lawfully existed or had planning permission at the date of this Order has been submitted to and approved by the relevant planning authority. The scheme shall include a time limit for the investigation of complaints, and for the implementation of mitigation measures. The scheme shall be implemented as approved.

Archaeology

24.—(1) No authorised development shall commence until a scheme of archaeological investigation has been submitted to and approved by the relevant planning authority.

(2) The scheme of archaeological investigation shall incorporate—

- (a) a walkover survey before commencement of the authorised development;
- (b) fencing to be provided around Twr yr Hill round barrow and Maen Cred standing stone during construction works;
- (c) where presence of archaeological remains is established a watching brief will be undertaken during construction to record the surviving archaeological remains; and

- (d) a watching brief during construction of all other infrastructure to record any previously unknown archaeological remains that may be present; and
 - (e) proposed peat core sampling.
- (3)The scheme of archaeological investigation shall be implemented as approved.

Ecological clerk of works

- 25.**—(1)No authorised development shall commence until, following consultation with NRW and approval by the relevant local planning authority, an ecological clerk of works has been appointed.
- (2)The ecological clerk of works shall be retained throughout the duration of civil construction works on site to advise on minimising ecological effects of the construction activities.

Surface water drainage

- 26.**—(1) No authorised development shall commence until, following consultation with NRW, details of the surface water drainage system (including means of pollution control) have been submitted to and approved by the relevant planning authority.
- (2)The details of the surface water drainage system submitted under paragraph (1) shall accord with the Outline Surface Water Management Plan at Annex 8.1 of the environmental statement to ensure that existing runoff regimes are maintained where possible and no increase in peak runoff is experienced within receiving watercourses as a consequence of the authorised development and shall include a mechanism to establish a baseline for the existing surface water drainage conditions.
- (3)The surface water drainage system shall be constructed in accordance with the approved details.

Accumulation and deposits

- 27.**—(1) No authorised development shall commence until, following consultation with NRW, a written scheme for the management of any accumulations and deposits has been submitted to and approved by the relevant planning authority.
- (2)The approved scheme for the management of accumulations and deposits shall be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

Infra-red aviation lighting

- 28.** No wind turbine shall be erected until, following consultation with the Ministry of Defence, details of the installation of infra-red aviation warning lights have been submitted to and approved by the relevant planning authority. The lights shall be installed in accordance with the approved details and maintained until the wind turbines are decommissioned in accordance with requirements.

Defence Geographic Centre

- 29.** No wind turbine shall be erected before information on the accurate location of the wind turbines has been provided to the Defence Geographic Centre of the Ministry of Defence.

Noise

- 30.** The level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when calculated in accordance with the Guidance Notes shall not exceed the values set out in Table 1 below. Noise limits for dwellings which lawfully existed or had planning permission at the date of this Order and which are not listed in Table 1 shall be those of the physically closest location listed in Table 1 below, unless otherwise agreed with the relevant

planning authority. The coordinate locations to be used in determining the location of each of the dwellings listed in Table 1 shall be those listed in Table 2.

Table 1: The $L_{A90,10min}$ dB Noise Level

Location	Standardised wind speed at 10 metre height (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
Bron Bannog	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1	41.7	44.3	46.6
Castell y Waen	30.8	30.8	30.8	30.8	30.8	30.8	30.8	30.8	31.9	33.5	35.1	36.7
Cefn Rofft	36.7	36.7	36.7	36.7	36.7	36.7	36.7	36.7	39.0	42.3	45.6	48.8
Cefnbannog	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	38.3	42.1	45.8	49.3
Crud-y-Gwynt	39.3	39.3	39.3	39.3	39.3	39.3	39.3	39.9	41.0	42.3	43.8	45.4
Cruglas	39.6	39.6	39.6	39.6	39.6	39.6	39.6	39.6	39.6	39.6	41.4	44.3
Diffws	37.2	37.2	37.2	37.2	37.3	39.0	40.7	42.2	43.3	44.0	44.4	44.6
Hafod Caradoc	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.8	35.4	38.1	40.8
Hafod Ty Ddu	32.0	32.0	32.0	32.0	32.0	32.0	32.0	35.1	39.2	42.6	45.7	48.8
Hafotty Newydd	38.7	38.7	38.7	38.7	38.7	38.7	38.7	38.7	38.9	41.7	44.5	47.2
Plas Nant Glyn	28.2	28.2	28.2	28.2	28.2	28.2	28.2	28.2	28.2	28.2	28.2	28.2
Tai'n-y-Waens	39.3	39.3	39.3	39.3	39.3	39.3	39.3	39.3	40.9	44.1	47.2	50.2
Tal-y-cefn Uchaf	39.2	39.2	39.2	39.2	39.2	39.2	39.2	40.2	43.4	46.6	49.8	52.8
Trawsnant	38.4	38.4	38.4	38.4	38.4	38.4	38.4	38.4	38.4	39.4	41.9	44.9
Boced	35.1	35.1	35.1	35.1	35.1	35.1	35.1	35.1	35.1	36.1	38.6	41.5
Bod Petryal	32.7	32.7	32.7	32.7	32.7	32.7	32.7	33.7	35.7	35.7	35.7	35.7
Bryn Bach	34.2	34.2	34.2	34.2	34.2	34.2	34.2	34.2	34.2	35.2	37.7	40.7
Bryn Gaseg	34.2	34.2	34.2	34.2	34.2	34.2	34.2	34.2	36.5	39.8	43.1	46.3
Bryn-celyn	33.8	33.8	33.8	33.8	33.8	33.8	33.8	34.8	36.8	36.8	36.8	36.8
Brynhyfryd	35.3	35.3	35.3	35.3	35.3	35.3	35.3	35.3	36.1	39.9	43.6	47.1
Bryn-y-gwrgi	37.6	37.6	37.6	37.6	37.6	37.6	37.6	37.6	39.3	42.5	45.6	48.6
Bryn-yr-eryr	33.1	33.1	33.1	33.1	33.1	33.1	33.1	33.1	35.5	38.8	42.1	45.3
Capel Hiraethog	38.2	38.2	38.2	38.2	38.2	38.2	38.2	38.2	38.2	38.2	40.0	42.9
Derwydd	35.2	35.2	35.2	35.2	35.2	35.2	35.2	35.2	37.6	40.8	44.2	47.4
Drws-y-Buddel	31.7	31.7	31.7	31.7	31.7	31.7	31.7	31.7	31.7	32.7	35.2	38.2
Foel	36.1	36.1	36.1	36.1	36.1	36.1	36.1	36.1	38.5	41.7	45.1	48.3
Garreg-Iwyd	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.0	33.4	36.1	38.8
Glan-y-gors	34.7	34.7	34.7	34.7	34.7	34.7	34.7	34.7	34.7	37.3	39.9	42.2
Hafod Olygfa	32.0	32.0	32.0	32.0	32.0	32.0	32.0	34.6	38.7	42.1	45.2	48.3
Hafotty Bach	36.3	36.3	36.3	36.3	36.3	36.3	36.3	36.3	36.3	37.3	39.9	42.8
Hafotty Hendre	39.6	39.6	39.6	39.6	39.6	39.6	39.6	39.6	41.2	44.4	47.5	50.5
Isgaer-wen	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.2	41.0	43.8	46.5
Lodge Isaf	35.5	35.5	35.5	35.5	35.5	35.5	35.5	35.5	36.3	40.1	43.9	47.3
Lodge Uchaf	35.7	35.7	35.7	35.7	35.7	35.7	35.7	35.7	36.5	40.3	44.0	47.5
Maes Cadarn	37.8	37.8	37.8	37.8	37.8	37.8	37.8	37.8	37.8	37.8	39.6	42.5
Nant Uchaf	38.1	38.1	38.1	38.1	38.1	38.1	38.1	38.1	38.1	39.1	41.6	44.6
Pantdedwydd	36.6	36.6	36.6	36.6	36.6	36.6	36.6	36.6	38.9	42.2	45.5	48.7
Pedair-a-dimai	31.9	31.9	31.9	31.9	31.9	31.9	31.9	31.9	34.3	37.6	40.9	44.1
Pen-Bedw	35.5	35.5	35.5	35.5	35.5	35.5	35.5	35.5	35.5	36.5	39.0	41.9
Pennant	38.3	38.3	38.3	38.3	38.3	38.3	38.3	38.3	38.3	38.3	40.1	43.0
Pennant Uchaf	32.5	32.5	32.5	32.5	32.5	32.5	32.5	32.5	32.5	34.6	37.3	40.0
Pen-y-bryn	35.2	35.2	35.2	35.2	35.2	35.2	35.2	36.2	38.2	38.2	38.2	38.2
Pen-y-Lan	37.4	37.4	37.4	37.4	37.4	37.4	37.4	37.4	37.4	38.4	40.9	43.8
Seler	38.3	38.3	38.3	38.3	38.3	38.3	38.3	38.3	38.3	39.3	41.8	44.8
Tai Ucha	38.2	38.2	38.2	38.2	38.2	38.2	38.2	38.2	38.2	39.2	41.7	44.7
Tai'n-y-graig	37.7	37.7	37.7	37.7	37.7	37.7	37.7	38.7	41.8	45.0	48.2	51.3
Tal y Cefn Isaf	38.8	38.8	38.8	38.8	38.8	38.8	38.8	38.8	40.5	43.7	46.8	49.8
Tan-y-bwlch	34.8	34.8	34.8	34.8	34.8	34.8	34.8	35.8	37.8	37.8	37.8	37.8
Ty Newydd	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.0	32.0	33.8	36.5	39.2
Ty-nant	37.7	37.7	37.7	37.7	37.7	37.7	37.7	37.7	40.1	43.4	46.7	49.9
Ty'n-y-ffordd	30.5	30.5	30.5	30.5	30.5	30.5	30.5	30.5	32.9	36.2	39.5	42.7
Ty-Uchaf	37.8	37.8	37.8	37.8	37.8	37.8	37.8	37.8	38.0	40.8	43.6	46.4
Waen Ganol	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	40.1	42.7	45.0
Waen Ganol2	37.2	37.2	37.2	37.2	37.2	37.2	37.2	37.2	37.2	39.8	42.4	44.7
Waen Uchaf	38.5	38.5	38.5	38.5	38.5	38.5	38.5	38.5	38.5	41.1	43.7	46.0
Wern Uchaf	27.3	27.3	27.3	27.3	27.3	27.3	27.5	29.5	31.8	34.3	37.0	39.7

Table 2: Coordinate locations of the properties listed in Table 1.

Property	Easting	Northing
Bron Bannog	303230	352830
Castell y Waen	299803	362240
Cefn Rofft	300882	349754
Cefnbannog	302337	351034
Crud-y-Gwynt	302463	354928
Cruglas	302917	353853

Diffws	302388	357614
Hafod Caradoc	298722	359204
Hafod Ty Ddu	301570	359341
Hafotty Newydd	300176	354208
Plas Nant Glyn	300377	361202
Tai'n-y-Waens	299856	351666
Tal-y-cefn Uchaf	299732	352723
Trawsnant	302393	356134
Boced	302976	358286
Bod Petryal	303760	351073
Bryn Bach	302098	358784
Bryn Gaseg	300677	349373
Bryn-celyn	302053	349903
Brynhafryd	303561	351370
Bryn-y-gwrgi	299592	350697
Bryn-yr-eryr	300984	349178
Capel Hiraethog	303741	354707
Derwydd	300348	349609
Drws-y-Buddel	302225	359813
Foel	299701	350042
Garreg-lwyd	300264	359607
Glan-y-gors	304906	351677
Hafod Olygfa	301400	359413
Hafotty Bach	303271	357991
Hafotty Hendre	300246	351304
Isgaer-wen	299620	354471
Lodge Isaf	303100	351300
Lodge Uchaf	302715	351159
Maes Cadarn	303961	355254
Nant Uchaf	302894	355876
Pantdedwydd	301360	349728
Pedair-a-dimai	300207	349245
Pen-Bedw	303639	357401
Pennant	303922	354677
Pennant Uchaf	299059	359533
Pen-y-bryn	301707	349724
Pen-y-Lan	303807	356760
Seler	302815	355559
Tai Ucha	302775	356368
Tai'n-y-graig	298676	352289
Tal y Cefn Isaf	299388	352000
Tan-y-bwlch	301894	349893
Ty Newydd	299434	359360
Ty-nant	300215	350152
Ty'n-y-ffordd	299922	349210
Ty-Uchaf	299007	353971
Waen Ganol	304136	353152
Waen Ganol2	304169	352986
Waen Uchaf	303718	353376
Wern Uchaf	298304	360149

Note to Table 2: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

31. Within 21 days from the receipt of a written request from the relevant planning authority and following a complaint to the relevant planning authority from the occupant of a dwelling which lawfully existed or had planning permission at the date of this Order, the undertaker shall, at its own expense, employ an independent consultant approved by the relevant planning authority to assess the level of noise immissions from the authorised development at the complainant's property following the procedures described in the guidance in Part 4.

32. The undertaker shall, if directed by the relevant planning authority, switch off any of the wind turbines in order to assess compliance with the noise limits.

33. The undertaker shall provide to the relevant planning authority the independent consultant's assessment and conclusions regarding the noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such

information shall be provided within 3 months of the date of the written request of the relevant planning authority unless otherwise extended in writing by the relevant planning authority.

34. The undertaker shall continuously log wind speed wind direction and power generation at each of the turbines on the site relating to authorised development. The undertaker shall continuously log wind speed and wind direction at all anemometer masts on the site. The undertaker shall provide all logged data to the relevant planning authority at its written request and in accordance with the Guidance Notes within 28 days of such request. All data shall be retained until the commencement of a decommission and site restoration scheme under Requirement 5.

35.—(1) No authorised development shall commence until an assessment demonstrating that noise from the electrical substation on the site would not exceed a level of 30 dB L_{Aeq} at the nearest residential property has been submitted to and approved in writing by the relevant planning authority.

(2) The substation shall be constructed in accordance with the approved assessment.

Restriction on extent of Authorised Development

36. Notwithstanding the provisions of this Order the undertaker may construct—

- (a) either Work No. 4A or Work No.4B as part of the authorised development and shall notify the relevant planning authority prior to the commencement of the authorised development which of those Work Nos. it intends to construct; and
- (b) either Works Nos. 5A and 14A or Works Nos. 5B and 14B as part of the authorised development and shall notify the relevant planning authority prior to the commencement of the authorised development which of those Works Nos. it intends to construct.

PART 4

Noise Guidance for Requirements 30-34

This guidance forms part of requirements 30 – 33. They further explain these requirements and specify the methods to be employed in the assessment of complaints about noise emissions from the authorised development.

Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farm” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

1

- (a) Values of the $L_{A90,10min}$ noise statistic shall be measured at the complainant’s property using a sound level meter of EN 60651/BS EN 60804 Type 1, or EN 61672 Class 1 quality (or the replacement thereof) set to measure using a fast time A-weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This shall be calibrated in accordance with the procedure specified in BS 4142:1997 (or its replacement). These measurements shall be made in such a way that the requirements of Note 3 shall also be satisfied.
- (b) The microphone should be mounted at 1.2 - 1.5 m above ground level, fitted with a two layer windshield (or suitable alternative approved in writing from the relevant planning authority), and placed outside the complainant’s dwelling. Measurements should be made in “free-field” conditions. To achieve this, the microphone should be placed at least 3.5m away from the building facade or any reflecting surface except the ground at a location that shall be agreed with the relevant planning authority.
- (c) The $L_{A90,10min}$ measurements shall be synchronised with measurements of the 10-minute arithmetic mean average wind speed and with operational data, including power

generation information for each wind turbine, from the turbine control systems of the authorised development.

- (d) The undertaker shall continuously log arithmetic mean wind speed and arithmetic mean wind direction data in 10 minute periods from the hub height of anemometers located on the site permanent mast unless otherwise requested by the relevant planning authority to enable compliance with the requirements to be evaluated. The mean wind speed data shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10m height wind speed data which is correlated with the noise measurements of Note 2(a) in the manner described in Note 2(c).

2

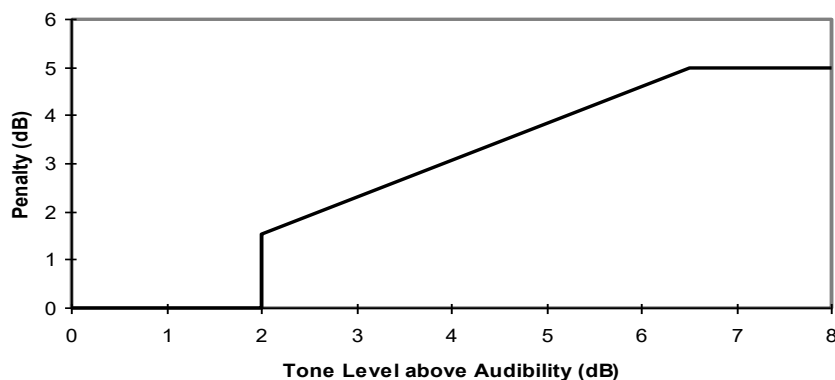
- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the relevant planning authority. In specifying such conditions the relevant planning authority shall have regard to those conditions which were most likely to have prevailed during times when the complainant alleges there was disturbance due to noise. At its request the undertaker shall provide within 28 days of the completion of the measurements all of the data collected under requirement 31 to the relevant planning authority.
- (b) Valid data points are those measured in the climatic conditions specified by the relevant planning authority but excluding periods of rain. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Note 1(c) and is situated in the vicinity of the sound level meter.
- (c) A least squares, "best fit" curve of a maximum 4th order polynomial or otherwise as may be agreed with the relevant planning authority shall be fitted between the standardised mean wind speed (as defined in Note 1 paragraph (d)) plotted against the measured $L_{A90,10min}$ noise level. The noise level at each integer speed shall be derived from this best-fit curve.

3

Where, in the opinion of the relevant planning authority, noise immissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure shall be used—

- (a) For each 10-minute interval for which $L_{A90,10min}$ data have been obtained as provided for in Note 1, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods shall be regularly spaced at 10-minute intervals provided that uninterrupted clean data are available. Where clean data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from standard procedure as described in Section 2.1 on pages 104 – 109 of ETSU-R-97 shall be reported.
- (b) For each of the 2-minute samples the margin above or below the audibility criterion of the tone level difference, ΔL_{tm} (Delta L_{tm}), shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (c) The margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (d) A linear regression shall then be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used.

- (e) The tonal penalty shall be derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed shall be calculated as the arithmetic sum of the measured noise level from the authorised development, as determined from the best-fit curve described in Note 2, and the penalty for tonal noise.



4

If the measured noise level from the authorised development (including the application of any tonal penalty as per Note 3) is above the limit set out in the requirements, measurements of the influence of background noise shall be made to determine whether or not there is a breach of requirement. This may be achieved by repeating the steps in Note 1 & 2 with all of the wind turbines switched off in order to determine the background noise, L_3 , at the assessed wind speed. The wind turbine noise at this wind speed, L_1 , is then calculated as follows, where L_2 is the measured noise level from the authorised development at the assessed wind speed with turbines running but without the addition of any tonal penalty—

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

The measured noise level from the authorised development is re-calculated by adding the tonal penalty (if any) to the corrected noise level L_1 .

SCHEDULE 2

Article 10

STREETS SUBJECT TO STREET WORKS

(1) Area	(2) Street subject to street works
County of Denbighshire	Unclassified public road shown as PR1 on the access plan Unclassified public road shown as PR2 on the access plan Unclassified public road shown as PR3 on the access plan

County Borough of Conwy	Footpath FP 12
	Footpath FP 10
	Footpath FP 15
County of Denbighshire and County Borough Conwy	Footpath FP 142
	Footpath FP 13
	Footpath FP 14
	Unclassified public road shown as PR5 on the access plan

SCHEDULE 3

Article 11

STREETS TO BE STOPPED UP

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
County of Denbighshire	Footpath FP 19	Between points P1 and P2	Footpath between points P1, P3 and P4

SCHEDULE 4

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Denbighshire	Unclassified public road shown as PR1 on the access plan	Between points T1 and T2
	Unclassified public road shown as PR2 on the access plan	Between points T2 and T3
	Unclassified public road shown as PR3 on the access plan	Between points T4 and T5
County Borough of Conwy	Footpath FP 12	Between points T12 and T13
	Footpath FP 10	Between points T24 and T25
	Footpath FP 15	Between points T22 and T28

County of Denbighshire and County Borough Conwy	Footpath FP 142	Between points T8 and T9
	Footpath FP 13	Between points T13 and T14
	Footpath FP 14	Between points T13, T15 and T16
	Unclassified public road shown as PR5 on the access plan	Between points T6 and T7

SCHEDULE 5

Article 15

ACCESS TO WORKS

(1) <i>Area</i>	(2) <i>Description of access</i>
County of Denbighshire	Unclassified Road north of Clocaenog Forest B5105

SCHEDULE 6

Article 23(1) and Article 29

LAND SUBJECT TO ACQUISITION OF NEW RIGHTS AND INTERFERENCE WITH PRIVATE RIGHTS

PART 1

Land subject to acquisition of new rights

(1) <i>Number of land shown on land plan</i>	(2) <i>Purpose for which rights may be acquired</i>
9, 10, 11, 12, 13	Right to install cables in the public highway

PART 2

Land subject to interference with private rights

(1) <i>Number of land shown on land plan</i>	(2) <i>Rights to be interfered with</i>
1	mineral rights

2, 3, 4, 5, 6, 7	private rights of way
8	private rights of way, fishing and sporting rights and rights to water cattle, sheep, horses and other stock at reservoir

SCHEDULE 7

Article 23(4)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right is purchased from”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition) as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c.26.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Clocaenog Forest Wind Farm Order 201[X](a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(a) S.I.201[X]

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 35

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned, have effect.

2. In this Schedule

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity utility undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas utility undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water utility undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage utility undertaker
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(a) 1989 c.29.

(b) 1991 c.56.

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (g) a water utility undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage utility undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker shall not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any right of a utility undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The utility undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, shall be executed by the undertaker

without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker shall submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably

practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power,

within a reasonable time of being notified by the utility undertaker that it has incurred such expenses.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than

apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided by the utility undertaker, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

STATUTORY INSTRUMENTS

201[X] No. []

INFRASTRUCTURE PLANNING

The Clocaenog Forest Wind Farm Order 201[X]

<i>Made</i>	- - - -	<i>201[X]</i>
<i>Laid before Parliament</i>		<i>201[X]</i>
<i>Coming into force</i>	- -	<i>201[X]</i>